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HAVE MORMONS ANY RIGHTS?

THE NEW EDMUNDS BILL.

BRIEF IN RE SENATE BILL NO. 10.

A BILL to amend an act entitled "An Act to amend Section Fifty-three Hundred and Fifty-two of the Revised Statutes of the United States in reference to Bigamy, and for other purposes," approved March 22, 1882.

BRIEF

In Re

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I.

I. This bill, in substantially its present shape, has twice passed the Senate. It is now pending in the House of Representatives, and has been referred to the Judiciary Committee for examination and report thereon.

The legislation proposed is extraordinary. It is subversive of fundamental principles recognized in every system of jurisprudence established among men. It violates the letter and spirit of the constitution, and is antagonistic to the whole theory of our government. It disregards the law of trusts, so carefully elaborated and hedged about with numberless safeguards, in order to meet the necessities of human society. It ruthlessly disturbs and destroys vested rights. It provides for the seizure of the person, the invasion of the domicile, and the incarceration of the citizen without due process of law.

The language of the bill is indefinite. Its scope and purposes cannot be determined. New offices undreamed of by the founders of our government are created, and the duties, obligations, and extent of power of the incumbents are not prescribed. These, and a multitude of undetermined details, are dependent upon the construction which the courts may give to this proposed act and to prior acts of Congress.

This is a new and dangerous method of legislating. It is not con-

sonant with the spirit of our institutions. It devolves upon the judicial department of the government a power not granted by the constitution, and which the fathers would not have conferred. Experience has proved that the courts are subject to passion and prejudice when public sentiment, however created, runs with resistless force in any direction. Constitutional barriers, erected for the security of the people, prove weak defences when the legislature, to escape responsibility, gives the judiciary opportunity to legislate by construction. Infractions of the fundamental law of the land, however effected, inevitably result in evil to the whole body of the people !

II. Measures as objectionable as this proposed legislation have rarely been enacted and enforced by absolute governments in recent times. The universal condemnation of all unjust, illiberal, harsh, and cruel laws attests most eloquently the progress humanity has made during the last century in enlightened liberalism. Selfish, narrow-minded, short-sighted, cruel, and vindictive as the English landlords of Ireland may be to-day, they would recoil with horror from the proposition to re-enact the penal laws against catholic Irishmen. Irish tenants have few rights English landlords and English lawmakers feel bound to respect, but their priests are no longer hunted down, their churches confiscated, their schools prohibited, and countless other cruelties practised upon them in the name of religion. Thank God ! English injustice, cruelty, wrong, and outrage are no longer possible, even in Ireland, under the cloak of "mere political piety, which is always a sham and a false pretence."

A sad mockery of boasted British justice Irishmen have had meted out to them under recent parliamentary legislation, but no English legislator ever proposed to compel Irish wives to testify against their husbands ! The conspiracy act making land-leaguers, who petitioned for redress of grievances, conspirators ; which provided for wholesale arrests, and erected tribunals to convict, was a most atrocious piece of tyranny. But there were some outrages which could not be perpetrated upon Irish citizens even under this monstrous law. Persons who might be *suspected* of knowing some fact or incident which would bear against the accused could not be held to have contemned the majesty of the law before they had been duly summoned as witnesses !

III. Some features of this bill correspond exactly with legislation enacted a few years since by the absolute government of Germany, at the dictation of Bismarck, for the regulation of the Catholic Church within its borders. There is at least this striking coincidence between the two measures—Bismarck's law for the suppression of the catholic hierarchy in Germany, and Edmunds' bill for the destruction of the Mormon Church establishment, advance the same proposition and are defended on the same ground, namely, that to take control of all the real and personal property of a church organization, to seize its revenues, to dominate the administration of all its temporal affairs, is not to make a law respecting an establishment of religion or to prohibit the free exercise thereof. The temporal power of the Catholic Church was assumed to be inimicable to, and incompatible with, the absolutism of the German Empire, and, therefore, must be curtailed by the *theft* of its property and the restriction of the hierarchy exclusively to immaterial affairs—the State relieving it of such material and worldly matters as the conservation and employment of the estates with which it had been endowed by its pious adherents.

The Constituent Assembly of France in 1789 and 1790 based its right of confiscation of the property of the nobility and of the church upon the Rights of Man, and the conditions of the Social Contract. The theory was that the State not only has the right, but is bound to exercise it, to remake society from top to bottom. Pure reason, and the abstract rights of men in a state of nature, were to be the guides in legislating for a community eight centuries old! Equally arbitrary, and as monstrously wicked and impolitic, was the decree of Louis XIV more than a century before, revoking the Edict of Nantes. The rights of conscience and the rights of property were trampled upon in both instances. France was depleted of one-half of her best blood, and the social disorders and state of semi-anarchy which threaten her people and government to-day are largely due to these two unparalleled crimes. Nations sowing the wind must in due time reap the whirlwind!

II.

I. The author of the bill before you, as well as of the act of March 22, 1882, is skilled in the use of words, and in framing sentences

which appear to mean one thing and yet are capable of being interpreted to import an entirely different meaning. The act of January 29, 1877, known as the Electoral Commission law, is a conspicuous example of his adroitness in phrasing a bill. This method of accomplishing a purpose by vague legislative phraseology, to be made definite by judicial construction as necessity may require, is convenient when constitutional prohibitions are to be overridden, and legal principles, on which society is based, are to be disregarded.

Prejudice, born of ignorance and self-conceit; intolerance, offspring of selfishness and presumption; bigotry, compound of pride and zeal; and fanaticism, spawn of the devil, impregnated by divine enthusiasm, leagued with hate, greed, and demagogism, are arrayed against the Mormon people. Pharisees, hypocrites, "make broad their phylacteries and enlarge the borders of their garments" to hide their own infirmities while denouncing the sins of Mormon communities. Better by far would it be for those whose "garments are spotted by the flesh" to "judge not." They should remember that "for with what judgment ye judge, ye shall be judged; and with what measure ye mete, it shall be measured to you again."

The adherents of every other religious creed are enlisted in the crusade against the Mormons, with rancor proportioned to the zeal with which their own dogmas are cherished and maintained. Men and women, who are tolerant of the teachings and practices of every other sect and of the freest speech and thought, even when directed "with ambitious aim against the throne and monarchy of God," are not satisfied to leave the correction of the errors of Mormonism to that benign influence born of the christianity they profess. Still another class who endure with complacency vices and evils, rampant in their midst, which are at war with every social virtue, threaten the morals of every family, and year after year bring grief, shame, and wretchedness to countless firesides, instigate and clamor for the enactment of special laws against Mormons.

Sustained by this well-nigh universal public sentiment, the originator of anti-Mormon legislation is secure of the applause of the multitude, and in but slight danger of condemnation if his measures are violative of the underlying principles of every system of jurisprudence, and forbidden by the express commandments of our written constitution. The end sought will justify the means, and legal

casuistry is scarcely necessary to cloak the design of the wickedest law.

II. But however strong this public sentiment may be, there are a vast number of men who believe in the sanctity of an oath, and are unwilling to forswear themselves even to do that which may be popular for the time being. They may believe that Mormonism is the greatest of all evils, and regard its devotees as knaves or fools, but they know that it would be a monstrous crime to deprive them of a single right guaranteed by the constitution. Believing polygamy to be an intolerable evil, repugnant to christian civilization, these conscientious men will go to the uttermost verge of unprohibited ground to punish those who practise it. But they will not meddle with those who merely believe and do not attempt to put in practice their belief.

"It is sometimes difficult," says Judge Black, "to see with certainty whether a particular act falls on one side or another of the line which divides the domain of conscience from that of the secular ruler." But some things have been determined for us. "A mere sin against God, not affecting the relations of man to his fellow-man, false worship, heterodox belief, erroneous teachings, bad systems of ecclesiastical discipline; these are placed by our constitution beyond the reach of human legislation. But any overt act detrimental to society in general or injurious to the public may be forbidden by the State, and the offender cannot justify himself by showing that it is right according to his interpretation of the Divine will."

The scruples of conscientious men are, therefore, to be overcome before the complete destruction of the Mormon Church can be accomplished by legislative enactments and the judicial construction thereof. Hence a predetermined scheme is proposed in instalments. An entering wedge is introduced, and before its effect is seen another is proposed. The resistance to the first is stubborn, as might naturally be expected. The philosophy of the opposition is not considered. Time is not granted for the effect of the enforcement of the new law to be calmly and impartially studied. The cry is raised by the greedy spoilers who are impatient to administer upon the Mormon estate, civil as well as ecclesiastical, that it is the Mormon hierarchy which stands in the way and obstructs the law.

Down with it! Root it up! Prejudice, intolerance, bigotry, fanaticism, re-echo, and hate, greed, and demagogism, prolong the cry.

III.

I. The avowed purpose of this scheme of legislation is the extinction of polygamy, but there is a more comprehensive design in view. The first enactment making polygamy a crime, as it was originally drawn, dealt also a direct blow at the Mormon Church establishment.

The act of July 1, 1862, besides prohibiting bigamy or polygamy and prescribing the punishment therefor, "disapproved of and annulled" the ordinance of the legislative assembly of the territory of Utah "incorporating the Church of Jesus Christ of Latter-day Saints," and provided also "that it should not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any territory of the United States during the existence of the territorial government of a greater value than \$50,000 under the name or pretence of any religious corporation." Property already acquired was excepted.

In the outset it was undoubtedly the purpose to annul the entire act of incorporation of the Mormon Church, but a proviso was inserted subsequently which shows that Congress *then* was not willing to venture upon prohibited ground. This proviso was:

"That this act shall be so limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right 'to worship God according to the dictates of conscience,' but only to annul all acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances."

The act of incorporation only recognized the power of the Church of Jesus Christ of Latter-day Saints "to solemnize marriage compatible with the revelations of Jesus Christ." It merely referred to the right and power claimed by all ecclesiastical organizations to perform marriage ceremonies. Spiritual marriages are not mentioned. Moreover, spiritual marriage, according to the faith, teach-

ings, and practice of the Church of Jesus Christ of Latter-day Saints is not temporal marriage. Plural marriages are for time as well as for eternity. Spiritual marriages are ceremonies joining dead persons by proxies to living ones, in order that in the hereafter the holy estate of matrimony might continue. It is part of the creed of the church that without particular ceremonies—sealing ordinances—marriage relations cease at the grave. It may be a superstition, a heterodox belief, a mere mummary, but, whatever it is, it cannot be held to transgress any human law, or to work evil by example.

II. The law recognizes marriage as a civil institution, and the state may regulate, as it sees fit, the performance of the ceremony. Congress having prohibited polygamous marriages, a mere religious ceremony, such as that mentioned in the act incorporating the Mormon Church, could not legalize them. The whole of the proviso, except that which declared the annulment of "all acts and laws which establish, maintain, protect, or countenance the practice of polygamy" was mere surplusage. These acts and laws were not embodied in the act incorporating the church, but it was falsely assumed that they existed among the statutes of the territory. Congress felt bound to declare that it did not mean by annulling the act of incorporation "to affect or interfere with the right of property legally acquired by the church, nor with the right 'to worship God according to the dictates of conscience.'" The provision, in regard to future acquisitions of real estate, was general, and applied to "any corporation or association for religious or charitable purposes."

It would seem clear, therefore, that the act of July 1, 1862, did two things: Made polygamy a crime, and limited the amount of real estate which any religious or charitable corporation or association could thereafter acquire in any of the territories to \$50,000 in value. Its other provisions about the "right of property legally acquired" and "legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances," were mere "leather and prunella." The "right of property legally acquired" could not be interfered with unless it was taken for public use and then not "without just compensation." The right "to worship God according to the dictates of conscience" is guaranteed by the constitution of the United States.

IV.

I. For twenty years no serious effort was made to enforce the law against polygamy. No inquiry, investigation, or proceeding of any kind has been had to ascertain whether religious or charitable corporations or associations have acquired, since July, 1862, real estate exceeding in value \$50,000. The first legal conviction for polygamy was in 1875, when the defendant, George Reynolds, presented himself and furnished the evidence to convict, in accordance with an arrangement made to have a *bona fide* case to carry up to the Supreme Court of the United States for its decision upon the constitutionality of the act of July 1, 1862. The understanding was that if the Supreme Court held the act to be constitutional, Reynolds was to receive the benefit of executive clemency, inasmuch as he offered himself as a voluntary sacrifice. But faith was not kept. He was compelled to serve out his sentence, less the commutation allowed in all cases for good behavior.

From time to time a great hue and cry was raised, and spasmodic crusades undertaken, but without an honest purpose to prosecute polygamy cases. It was the deliberate policy of those entrusted with federal authority in Utah to create the impression that the execution of any law against polygamy was impossible so long as the church hierarchy was suffered to exist and the Mormon people were permitted to exercise political power.

From the time the Mormons demonstrated the wonderful possibilities of Utah, which before their advent was deemed to be an irreclaimable desert, a portion of the small, restless, and unscrupulous non-Mormon minority, attracted thither by the hope of lawful or unlawful gain, have schemed and intrigued to obtain control of the machinery of the territorial government. They hope to accomplish this by securing the disfranchisement of the whole body of the Mormon people. They have ceaselessly agitated with this end in view. Their misrepresentations of the character of the Mormons, their monstrous lies about the practices of the Latter-day Saints, have filled the whole land and created the most erroneous conceptions of an entire people whose material progress and general virtues cause all disinterested visitors to marvel at their preconceived notions concerning them.

So determined were these desperate political adventurers, and so

potent their influence, that the act of March 22, 1882, was two years' old before any real attempt was made to execute its criminal provisions against polygamy and unlawful cohabitation. The political part of the law was put in operation immediately, and, notwithstanding every person who had been or was living in a polygamous state was disfranchised, it was vehemently claimed that the act was a practical failure, because, forsooth, less than one-twentieth of the voters of the territory were not thereby enabled to seize all political power!

It was not until on the eve of the Presidential contest of 1884 that an effort was made to enforce the law against polygamy and unlawful cohabitation. The success which has followed attests the fact that no further legislation is required to punish Mormons who offend, even constructively, by cohabitation. To show you how utterly impossible it is for a Mormon to escape conviction, the following case is instanced:

II. Lorenzo Snow, one of the twelve apostles of the Church of Jesus Christ of Latter-day Saints, lives in Brigham City, Utah. He is 72 years of age. He had, at the time of the passage of the act of March 22, 1882, seven wives, all of whom were provided with homes. He had been married to these women for many years, and had seven families. He separated from six of his wives, and ceased even to visit the homes in which they resided, save when, at long intervals, some business concerning the families required his presence, and on these occasions other persons were always present. These visits were always in the daytime, and he never eat or slept in the houses of the women from whom he had separated. The fact of his separation from six of his wives, and his living with one only, was notorious.

He was indicted for unlawful cohabitation, three separate offences being charged, one each for the years 1883, 1884, 1885, and was convicted on each charge. The evidence to support the charge laid in 1884 was, first, that he visited one of the families to see a daughter whose skull had been fractured by being thrown from a carriage; second, that he rode with the mother of the injured girl to and from where the accident occurred; third, that in company with his sister he rode in a carriage for an hour with another of his former wives; fourth, that at an anniversary dinner, given to him on his

70th birthday by the people of Brigham City, all the wives were present with hundreds of other friends. It was not proved that he ever saw one of the six females, with whom he had formerly lived, at any other times or places. It was proved, on the part of the defence, that he had not seen one of them on any other occasion, and that at the times he saw them other persons were present. He was not allowed to prove that he had had no sexual intercourse with them, but the proof submitted by the government showed clearly that such intercourse had been impossible. Everything—the manner of his living, his conduct, his declarations—tended to show that he was honestly endeavoring to live within the law. He supported the women, and his children by them, who were not already provided for. That he was and had always been an exemplary man and citizen was universally acknowledged. And yet under the rulings of the judge he was convicted in the three separate cases, and has been sentenced to undergo eighteen months' imprisonment and pay \$900 fine and the cost of prosecution.

It surely will be admitted, that when convictions can be secured in such cases upon such evidence, that further legislation is not needed to assure success in prosecutions for unlawful cohabitation. It is a notorious fact that grand juries find indictments against Mormons as a matter of course, and that in not one single case has a trial jury failed to convict.

V.

I. When we examine the provisions of section 5 of the act of March 22, 1882, in regard to the jurors who shall be empanelled in bigamy, polygamy, or unlawful cohabitation cases, and the interpretation thereof, and of the other parts of that act, by the courts, we cease to wonder at this invariable result. Inasmuch as the bill under consideration is supplemental to the act of March 22, 1882, and part of a general scheme of legislation against the Mormons, this examination is essential to an intelligent understanding of the proposed law.

In the first place, no person drawn or summoned as a juryman or talesman who is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, can serve on a grand or petit jury. And in the second place any person who

believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman, is disqualified to act as a juror. But this is not all. The person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge, and *belief* in the faith, doctrines, and teachings of the Mormon Church being developed that is held to be sufficient ground for challenge. If a Mormon swears that he recognizes that it is a crime under the laws of the United States to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman, and admits that he believes the revelations of Joseph Smith in regard to plural wives to have been a divine commandment, this *belief* is sufficient ground for challenge. It matters not if he swears that this *belief* would not influence him in finding a verdict on the evidence as to the guilt or innocence of a person charged with the crime of bigamy, polygamy, or unlawful cohabitation, his adherence to the Mormon Church is held by the courts to disqualify him.

To secure the proper material out of which to organize juries warranted to convict, when the regular panels are exhausted by the exclusion of Mormons, the judge directs an open venire to issue, and the United States marshal summons such persons as he desires. Men of notorious bad character, vile wretches whose morals are utterly depraved, who would not be recognized by those having regard for purity and decency, have, by this process, not only been on juries, but made foremen thereof.

II. Moreover, in the trial of unlawful cohabitation cases, the government is allowed to prove plural marriage and the living in polygamy prior to the passage of the act of March 22, 1882, and then to introduce evidence to create *presumption* of sexual intercourse since that date, and there to rest and ask the jury to *assume* that unlawful sexual intercourse has continued. If the defendant offers to prove that upon the passage of the act of March 22, 1882, he announced his purpose to obey the same and live within its apparent meaning by refraining from sexual intercourse with more than one woman; if he offers to prove by his plural wife or wives, that since March 22, 1882, and even prior thereto, he has not had sexual in-

tercourse with them, the courts rule that both offers are irrelevant and immaterial! He is not suffered to rebut evidence introduced by the government solely for the purpose of creating in the minds of the jury the *presumption* that he had continued sexual intercourse with his plural wife or wives. If the government fails to secure evidence to raise the presumption of sexual intercourse, or if the testimony tends to prove that such intercourse was impossible, as in the Snow case, then the court instructs the jury that the law presumes "matrimonial cohabitation" with the lawful wife "because it is in accordance with duty."

VI.

I. It must be borne in mind that this law against unlawful cohabitation affects, as a rule, only those who are not amenable to prosecution for bigamy or polygamy. The great majority are old men, all of whom entered into polygamy long before the act of 1882 was passed. They have families by their different wives, and owe obligations thereto which it would not be presumed that just and humane lawmakers, or the courts, would interfere with. Moreover, the word "cohabit," when used in criminal statutes, has always been with the generally accepted meaning of sexual intercourse. In the act of 1882, the words "cohabits," "cohabitation," "cohabiting," are used in the third, the fifth, the sixth, and the eighth sections, and always in their criminal sense. Their application is general and not specific as to a sect or class.

In the enforcement of the law the United States territorial courts have held that it was not the intention of Congress to correct general morals, but to punish those only who continued to live in a bigamous or polygamous state. For instance, that section 3, which makes it a misdemeanor, punishable by a fine of \$300, or imprisonment for six months, or by both fine and imprisonment, for "any male person, in a territory or other place, over which the United States have exclusive jurisdiction," who "cohabits with more than one woman," applies only to Mormons living with and holding out to the world two or more women as their wives. And section 5, which makes it a cause of challenge against "any person appearing or offered as a juror or talesman," who "believes it right" for a man "to live in the practice of cohabiting with more than one woman," is held to disqualify only Mormons.

The words "unlawful cohabitation," as used in the sixth section, are meaningless. That section authorizes the President to grant amnesty for offences committed before the passage of the act, and as there was no such offence as "unlawful cohabitation" known before the enactment of the law creating it, of course there could be no offenders prior to that time.

The eighth section disqualifies as voters and makes ineligible for election or appointment to, or to hold, any office or place of public trust, honor or emolument in, under, or for any territory or other place over which the United States have exclusive jurisdiction, or under the United States, polygamists, bigamists, or any persons cohabiting with more than one woman, and any woman cohabiting with any of the aforesaid described persons.

II. That the word "cohabit" has always had a recognized legal signification in criminal jurisprudence; that it has invariably been used in penal statutes with the meaning "to dwell or live together as man and wife," and implied sexual intercourse, cannot be gainsaid. Mr. Justice Miller, who is unquestionably high authority, in dissenting from the opinion of the Supreme Court in *Cannon v. The United States*, October Term, 1885, says :

"I think that the act of Congress, when prohibiting cohabitation with more than one woman, meant unlawful habitual sexual intercourse. It is, in my opinion, a strained construction of a highly penal statute to hold that a man can be guilty, under that statute, without the accompaniment of actual sexual connection. *I know of no instance in which the word cohabitation has been used to describe a criminal offence where it did not imply sexual intercourse.*"

When words with a generally accepted and recognized legal criminal signification are used in a penal statute to make unlawful a certain practice always admitted to be immoral, but, theretofore, not an offence punishable by statute law, it would seem, to any fair-minded person, a very great wrong to convict and punish persons who have honestly endeavored to obey the law and who could be held to have offended only by "a strained construction" of that law. And when that law, unquestionably applicable to all who actually offend within the general, as well as the legal criminal, signification of the words "used to describe a criminal offence," is held to apply only to the adherents of a certain religious creed, then that application, with or

without "a strained construction," is monstrous, and those who thus enforce and those who excuse and justify such an enforcement of the law merit the severest condemnation.

VII.

I. Any application of the law of March 22, 1882, which visited its pains and penalties upon others than Mormons, might be inconvenient and disagreeable. It would not meet with such universal approval.

If the law was interpreted and executed in accordance with the recognized legal and generally accepted signification of the words used to describe the criminal offence, "any male person" in the District of Columbia, the territory of Utah, "or other place over which the United States have exclusive jurisdiction," who "cohabits with more than one woman" would be guilty of a misdemeanor, and on conviction thereof could be "punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court."

Moreover, under section 8, "any person cohabiting with more than one woman," in the District of Columbia "or other place over which the United States have exclusive jurisdiction," *would have been disqualified to vote and rendered ineligible "for election or appointment" to, or to hold, "any office or place of public trust, honor, or emolument in, under, or for any such territory or place, OR UNDER THE UNITED STATES."*

II. The interpretation of the act of March 22, 1882, so as to avoid its general application and the consequences thereof, has not been without difficulty. The commissioners appointed to apply the provisions of the act to the machinery of elections in Utah territory were in a quandary. If they, in making rules and regulations for the guidance of the registration officers appointed by them, held that "any person cohabiting with more than one woman" was disqualified as an elector, or ineligible "for election or appointment" and not "entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such territory or place, or under the United States," a large proportion of the non-Mormon electors would be disqualified. Moreover, if the law was interpreted to be,

as its language implied, a measure to suppress social vice and improve the general morals, wherever the United States have exclusive jurisdiction, it might have proved very inconvenient in localities outside Utah territory.

The Utah commissioners were not equal to the occasion. They saw no way out of the dilemma, but by the exercise of powers not conferred upon them by the act which gave them being. Accordingly, in providing the form of an oath to be administered by the registrars, they interpolated the words not in the act of Congress, so that the electors presenting themselves for registration had to swear that they "did not live or cohabit with more than one woman *in the marriage relation.*"

Several Mormons, being unlawfully deprived of the elective franchise, carried a test case to the Supreme Court of the United States, and it was held by that court in *Murphy v. Ramsey*, (114 U. S., 15,) that in providing rules and regulations for registrars, the Commissioners had exceeded their powers, which were simply to provide for the registration of the voters of the territory by appointing persons therefor, and the canvass and return of all votes at elections in said territory for members of the legislative assembly thereof; that the registrars were not bound to obey the rules and regulations prescribed by the Commissioners, and if they thereby unlawfully excluded qualified voters, the responsibility rested upon the former and not upon the latter.

This was a rebuke to the five distinguished gentlemen who, in supervising the execution of the political features of the act of March 22, 1882, expend annually sixty-five to seventy thousand dollars, more than one-half of which goes into their pockets as salary, or is disbursed as clerk-hire to their relatives, and for travelling or incidental expenses. But they escaped liability, and the registrars being impecunious, the persons illegally deprived of the right of franchise could not obtain damages therefor.

VIII.

I. The court, however, had to meet another issue raised by the appellants. Bigamists, or polygamists, were disqualified to vote, or hold office, notwithstanding they became such long prior to the passage of the act of July 1, 1862, the first enactment making

polygamy a crime against the government of the United States. This, it was claimed, was giving the act of March 22, 1882, retrospective effect. It was punishing for acts which were not offences at the time they were committed, therefore the law was *ex post facto* and void. Thereupon the court held that a polygamist, or bigamist, according to the eighth section of the act of March 22, 1882, was a man—

“Who having previously married one wife, still living, and having another at the time when he presents himself to claim registration as a voter, still maintains that relation to a plurality of wives, although from the date of the passage of the act of March 22, 1882, until the day he offers to register and to vote, he may not in fact have *cohabited* with more than one woman, without regard to the question whether at the time he entered into such a relation it was a prohibited and punishable offence, or whether by reason of lapse of time since its commission a prosecution for it may not be barred, if he still maintains the relation, he is a bigamist or a polygamist, because that is the status which the fixed habit and practice of his living has established. He has a plurality of wives, more than one woman whom he recognizes as a wife, of whose children he is the acknowledged father, and whom, with their children, he maintains as a family, of which he is the head. And this status as to several wives may well continue to exist as a practical relation, although for a period he may not in fact *cohabit* with more than one; for that is quite consistent with the constant recognition of the same relation to many, accompanied with a possible intention to renew *cohabitation* with one or more of the others when it may be convenient.”

Therefore disqualifying such a person, depriving him of the right to vote and hold office, was not a punishment for the offence of bigamy or polygamy committed at some previous time.

“But because having at some time entered into a bigamous or polygamous relation, by a marriage with a second or third wife, while the first was living, he still maintains it, and has not dissolved it, although for the time being he restricts actual *cohabitation* to but one. He might in fact abstain from actual *cohabitation* with all and be still as much as ever a bigamist or a polygamist. He can only cease to be such when he has finally and fully dissolved in some effective manner, which we are not called on here to point out, the very relation of husband to several wives which constitutes the forbidden status he has previously assumed.”

III. Now observe that every time the court uses the words, *cohabit*, *cohabitation*, and *cohabited*, it is to imply sexual intercourse. The object of the court was to sustain in its entirety the act of March 22, 1882, and make it accomplish its purpose. The issue presented in the case before it was one involving only political features. Hence a distinction was made between a bigamist or polygamist and one who *unlawfully cohabited with more than one woman*. Following the language just quoted the court said :

"*Cohabitation* is but one of many incidents to the marriage relation. It is not essential to it. One man, where such a system has been tolerated and practised, may have several establishments, each of which may be the home of a separate family, none of which he himself may dwell in or even visit. *The statute makes an express distinction between bigamists and polygamists on the one hand, and those who COHABIT with more than one woman on the other*: whereas, if cohabitation with several wives was essential to the description of those who are bigamists or polygamists, those words in the statute would be superfluous and unnecessary. It follows, therefore, that any person having several wives is a bigamist or polygamist in the sense of the act of March 22, 1882, although since the date of its passage he may not have *cohabited* with more than one of them."

IX.

I. The distinction thus clearly made between supporting and maintaining more than one family and the offsprings of different wives and *cohabiting*, that is, having sexual relations with more than one woman, is emphasized in the paragraph following the one quoted from. After stating that disfranchisement is prescribed simply because of the "existing state and condition of the person" affected thereby, the court declares that "*continuing to live in that state afterwards* IS NOT AN OFFENCE, *although COHABITATION WITH MORE THAN ONE WOMAN IS. But as one may be living in a bigamous or polygamous state WITHOUT COHABITATION WITH MORE THAN ONE WOMAN, he is in that sense a bigamist or a polygamist, AND YET GUILTY OF NO CRIMINAL OFFENCE.*"

The English language can not more clearly convey the idea that a man, who had entered into polygamous relations prior to the statutory time within which prosecution could be instituted, might continue them without being guilty of a criminal offence under the act of March 22, 1882, *provided he cohabited* with only one woman.

He, however, would be a bigamist or a polygamist in the sense of the act of March 22, 1882, and, therefore, disqualified to vote or hold office. But to be guilty of a criminal offence he must *cohabit, have sexual intercourse, with more than one woman.*

Was this not an interpretation of the act of March 22, 1882, in its entirety? Was not the distinction clearly drawn between living in a *polygamous state* without being guilty of a criminal offence, and *unlawful cohabitation*? Is not *cohabitation* held to be sexual intercourse throughout this opinion? If a man had taken, at a time when it was not a criminal offence, plural wives, and maintained them and their offsprings, but refrained from cohabitation with all save one woman, the court declared he was "a bigamist or a polygamist, and yet guilty of no criminal offence."

II. Can it be possible that the Supreme Court of the United States would, in the construction of an act of Congress, hold that a man could live in a bigamous or polygamous state, and yet be guilty of no criminal offence because he did not cohabit with more than one woman, and in another case subsequently construe the same act so as to make it impossible for a man to live in such a state without being guilty of a criminal offence *although he actually cohabited with but one woman?*

The humiliating confession must be made! The majority of the Justices of the Supreme Court of the United States had not the moral courage to face "*civium ardor prava jubentium.*" They did not dare withstand "the angry visage of the tyrant," public opinion, and deal out justice "*si fractus illabatur orbis.*"

See how they had to stultify themselves! In the case of *Murphy v. Ramsey*, in order to hold that the law was not *ex post facto*, and, therefore, void, they declared:

"Disfranchisement is not prescribed as a penalty for being guilty of the crime and offence of bigamy or polygamy; for, as has been said, that offence consists in the fact of the unlawful marriage, and a prosecution against the offender is barred by the lapse of three years by section 1044 of the Revised Statutes. *Continuing to live in that state afterwards is not an offence, although cohabitation with more than one woman is. But as one may be living in a bigamous or polygamous state without cohabitation with more than one woman, he is in that sense a bigamist or a polygamist, AND YET GUILTY OF NO CRIMINAL OFFENCE.*"

One year later they decided, in *Cannon v. The United States*, that living in a bigamous or polygamous state without cohabitation was a criminal offence. Moreover, in quoting from the opinion of the court in *Murphy v. Ramsey*, to show that they preserved "*the spirit*" of their interpretation they omitted the essential part above quoted. Was that honest? Having held that a man might live in a bigamous or polygamous state without cohabiting with more than one woman and be guilty of no criminal offence, was it not dishonest, a year later, to hold that a man living in this state without cohabitation with more than one woman was guilty of a crime? They did this, strange as it may appear. They said: "It is the practice of unlawful cohabitation with more than one woman that is aimed at, a cohabitation classed with polygamy, and having its outward semblance." But section three, which makes unlawful cohabitation a crime, does not mention polygamy or polygamists. In section eight, prescribing disfranchisement, unlawful cohabitation is classed with polygamy, and in *Murphy v. Ramsey* it was declared: "The statute makes an express distinction between bigamists and polygamists on the one hand, and those who cohabit with more than one woman on the other."

How is that "express distinction" made? The opinion of the court, in *Murphy v. Ramsey*, uniformly treats unlawful cohabitation as unlawful sexual intercourse. In that case it was admitted that a man could live as a bigamist or polygamist, "have several establishments, each of which may be the home of a separate family," and yet not be guilty of a criminal offence by refraining from sexual intercourse. But in *Cannon v. The United States*, the opportunity for sexual intercourse is apparently held to be the gravamen of the offence. The intent of the law, it is held, was—

"To prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the continuance of the same relations which existed before the act was passed, and without reference to what may occur in the privacy of those relations. Compacts for sexual non-intercourse, easily made and as easily broken, when the prior marriage relations continue to exist, with the occupation of the same house and table, and the keeping up of the same family unity, is not the lawful substitute for the monogamous family, which alone the statute tolerates."

III. But what does the statute tolerate? In the Snow case, heretofore instanced, there was not an "occupation of the same house and table, and the keeping up of the same family unity." He separated from all but one of his seven wives when the act of March 22, 1882, became a law. He lived with one, and the government utterly failed to prove any living with the others. The defendant proved conclusively that there had not been the ordinary friendly intercourse of society. And yet Mr. Snow was convicted. The Supreme Court of the territory, in affirming the rulings of the court below, declared that this conviction was "a most righteous judgment."

X.

I. In the light of this interpretation and execution of the act of March 22, 1882, the first installment of a scheme of anti-Mormon legislation, let us examine the proposed supplemental measure.

Section 1 makes the lawful husband or wife of a person accused of bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, a competent witness, and he or she may be called and *compelled to testify* in such proceeding, examination, or prosecution without the consent of the husband or wife as the case may be. The only limitation, as to the scope of the examination of the husband or the wife and of the nature of the testimony they may be compelled to give against each other, is that confidential statements or communications made by either husband or wife to each other during the existence of the marriage relation shall be sacred. But where this line shall be drawn and what shall be held to constitute confidential statements or communications between husband and wife is left entirely to the discretion of the court.

The legal principle that the husband and the wife cannot be witnesses against or in behalf of each other has been recognized in every system of laws known to have existed among men. The simplest archaic rules of Aryan societies coming down to us from pre-historic times, have traces more or less distinct of this universal rule of law. The elaborate systems of jurisprudence developed from and upon the archaic forms have preserved this fundamental canon as the chief corner-stone of human society.

The Roman law, which was the perfection of the human thought

of that period of the world's history, held the relations of husband and wife to be sacred. The criminal code of every European government, founded upon that of Rome, does not permit the husband or wife to be witnesses against the other. The Code d'Instruction Criminelle of France, of Germany, of Austria, of Italy, of every continental power, including Russia, does not permit even the divorced wife to testify. The common law respects the sanctities of the marriage relation and all innovations on the ancient strict rule have been and are circumspect to the last degree. The proposition to make the husband or the wife competent witnesses against the other in bigamy cases, and to compel them to testify, would not be seriously entertained to-day in England.

The utmost departure from the common law that has been made in any state of this Union is to permit the husband or wife to be called as a witness to prove the fact of a previous marriage in a bigamy case. They are competent witnesses for no other fact, and they cannot be compelled to give their testimony.

It is useless to quote authorities. They are innumerable and uniform. I have examined the statutes of every state in the Union, and in not one is the husband or wife compellable to testify against the other. The proposition is monstrous. It has been properly characterized as one that is "in contemptuous defiance of the great principles which protect the sanctities of the family, and lie at the basis of civil society."

II. Bear in mind that this is not general legislation. It applies to a certain specified class of prosecutions. The husband or wife are made competent witnesses against each other and compelled to testify only "in any proceeding and examination before a grand jury, a justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States." The Supreme Court of the territory of Utah has held that the offence of unlawful cohabitation, created by the act of March 22, 1882, is one that can be committed by Mormons alone, and that that law does not, and was not intended to, apply to non-Mormons.

In a case where Rudolph Ames, a non-Mormon, of Payson, Utah, was arrested on a charge of unlawful cohabitation with his wife's sister, whom he had debauched and begat with child, she

living at the time under the same roof with his lawful wife, and so continuing to live, Chief-Justice Zane, on *habeas corpus* proceedings, discharged the accused, and in so doing gave an *obiter* decision to the effect that the act of March 22, 1882, was not enacted for the purpose of correcting general morals, or to punish lewd conduct or practices, but was intended to punish those who lived in a certain state with more than one woman, holding them out to the world as their wives.

The Supreme Court of the United States, in *Cannon v. The United States*, seems to take the same view of the law. It remarks incidentally in its opinion in that case that "unlawful cohabitation," within the meaning of the act of March 22, 1882, is not "meretricious unmarital intercourse with more than one woman. General legislation as to lewd practices is left to the territorial government." It follows, therefore, no matter how unfaithful the non-Mormon husbands or wives may be to their marriage vows, no matter how lewd their conduct may be, or how deleterious upon the morals of the society in which they live their examples may be, the severe penalties of the act of March 22, 1882, cannot be inflicted on them, nor can the husband or the wife, as the case may be, testify against the other. They cannot be witnesses in adultery, or divorce cases, even to prove the fact of marriage. The Mormons, it is universally admitted, are singularly free of this vice which is so common in other communities. Adultery is an unpardonable sin which cuts the offender off from all intercourse with co-religionists, and for which, now and hereafter, there is no possible atonement. The wife or wives of the adulterer must abandon him or be cut off from communion with the church and the saints.

III. Singling out any particular class of people and enacting highly penal laws for the punishment of offences committed by them, which are of the same nature as those their neighbors may with impunity be guilty of, is indefensible. Immoral practices, whether by Mormons or non-Mormons, are equally injurious to society. Legislation that is to punish one class of offenders and give immunity to another class, who are guilty of like immoralities, is shameful. To provide for the enforced testifying by Mormon wives and husbands against each other, under pains and penalties left to the discretion of the courts, when non-Mormon husbands and wives are

exempted, would be monstrous. Such legislation is unequal and partial, and therefore clearly unconstitutional. Locke on Civil Government says that one of "the bounds which the trust that is put in them by the society, and the law of God and nature, have set to the legislative power of every commonwealth, in all forms of government" is "they are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at the court and the countryman at the plough." And Judge Cooley, quoting this rule, declares: "This is a maxim in constitutional law, and by it we may test the authority and binding force of legislative enactments." (Con. Lim., § 392.)

Legislation compelling the husband or wife to testify against the other is not only wrong in principle but impolitic. The object of punitive legislation should be to discourage, not to promote, crime. What more powerful motive impelling to perjury than the love and affection of the wife and mother when she is to be made, by an unjust law, the instrument of injuring her husband and depriving her children of the support and care of their natural protector?

The argument which has been advanced in favor of compelling the lawful wife to testify against her husband is, that bigamy or unlawful cohabitation is a crime against her. So is assault with intent to kill, or maltreatment of any kind. Why limit it to the offences for which Mormons are alone being prosecuted in Utah and other territories? The position of the lawful wife of a polygamist is rather to be commiserated than to be made more miserable. The education and religious training of the Mormon women have prepared them for the lot which they voluntarily assume. The heroic fidelity, the marvellous constancy they display, may appear inexplicable to us, but shall we not respect these traits of character? It is absolutely certain that if this bill becomes a law the penitentiaries will be filled with the lawful wives of Mormons who will refuse to testify against their husbands. I know that the Mormon husbands will be magnanimous enough to urge their wives to obey this harsh and cruel law, but I know also that their wives will prefer martyrdom.

Moreover, there is no limitation upon the extent to which the inquisition into domestic and marital relations of husbands and wives may be carried if this bill becomes a law. No conception can be formed of the bitterness, the relentlessness, the shamelessness of the prosecuting officers, or of the latitude allowed by the courts in

Utah, unless you have been actual witnesses thereof. The demand is boldly made, by the vindictive and unscrupulous faction in Utah that clamors for severer measures, that Mormon women, as well as Mormon men, shall be punished. This bill takes a long stride in that direction. The seventh section deprives them of the right of suffrage, which they have enjoyed for fifteen years. And if they decline to testify, if they refuse to become the means of inflicting punishment upon those they love and esteem for conduct they do not believe to be wrong, they are to suffer at the discretion of judges who are not angels in human shape.

XI.

I. Section 2 is clearly unconstitutional. It is contemptuously violative of a right which Saxons have asserted and maintained from "the time whereof the memory of man runneth not to the contrary." It was no new right which they wrested by the strong arm from King John more than six-and-a-half centuries ago. It was a birth-right going back to archaic times which no tyrant was ever suffered to disregard. "*Ne corpus libri hominis capiatur nec imprisonetur * * * nisi per judicium parium suorum vel per legem terre*," are the words of the barbarous law-Latin of the period, which formulate what always has been, and always will be, "the law of the land" in England and the United States respecting the personal liberty of the citizen. Do not insult common intelligence by claiming that this bill is not in contravention of "the law of the land" as it is embodied in article 5 of our Bill of Rights. No person shall "be deprived of life, liberty, or property without due process of law!"

"By the law of the land," says Mr. Webster, "is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." Suppose you enact a general law which empowers all United States courts, judges, and commissioners to issue, instead of regular subpoenas, attachments compelling the immediate attendance and detention of witnesses upon *the suspicion* that they do not mean to obey the due process "issued and

served in the usual course!" How long would your lease on public life last? You would not dare do it. To propose it would rouse the land

"And put in every honest hand a whip
To lash the rascal naked through the world,
Even from the East to the West."

II. Has there been a single case where a Mormon served with a subpoena has failed to obey? Not one! Why then this extraordinary, this "unusual and partial legislation" which is intended to apply to Mormons only? Don't quibble with the juggling words "in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States," and, in the face of the interpretation by the courts of the act of March 22, 1882, pretend that this proposed enactment is even in the nature of general legislation.

But it is claimed that "the commissioner, justice, judge, or court, as the case may be," must have "*reasonable ground* to believe that such witnesses will unlawfully fail to obey a subpoena issued and served in the usual course." Whence is to be derived "this reasonable ground to believe" that witnesses "in bigamy, polygamy, or unlawful cohabitation cases" will unlawfully fail to obey the ordinary processes of the court? From spies, relators, and delators, who hang about the purlieus of the courts, driving a fair trade by their foul whisperings of suspicion. The result will be inevitable oppression. The innocent will be made to suffer. Private spite and personal vengeance will be gratified through the enginery which this bill will supply if it becomes a law.

I repeat there is no necessity for this proposed legislation. The statistics prove it. There have been since March, 1884, to January 15, 1886, 78 polygamy and unlawful cohabitation cases before United States commissioners, in which there were 159 witnesses. Of the seventy-eight accused persons seventy were held for the action of the grand jury. Up to Feb. 12th seven polygamists have been tried in district courts and six convicted. Indictments for unlawful cohabitation cases have been found against 141 persons, and thus far 74 have been tried without a single failure to convict. The convictions average two a day while the court is in session. In the case of Thomas Simpson, who was convicted and sentenced to two years in the penitentiary as a polygamist, a pardon has been

granted, it having been shown that he was not a Mormon and that he was an *unmarried man*! Surely there cannot have been, thus far, any difficulty in securing the attendance of witnesses. I assert, and challenge contradiction, that the processes of the courts have invariably been obeyed by Mormon witnesses.

III. Surely a Mormon has some rights we are bound to respect. Should the universal rule be reversed, and the Mormon witness treated as if he was in contempt before he has been summoned? Witnesses may be required to give bail for their attendance, and upon failure so to do may be detained, but they must first be lawfully subpœnaed. The exact forms must be complied with. A witness served with the form of a subpœna, usual in civil cases, commanding his attendance in a criminal case and failing to attend, has been held not to be guilty of contempt of court. The omission to tender the witness fees also relieves the party otherwise regularly subpœnaed, of contempt. An attachment for a witness can only issue "when it is distinctly shown that he is absent from court with intent to disobey the subpœna."

It has been said that this provision of the Senate bill is merciful because it provides "that no person shall be held in custody under any attachment issued as provided by this section for a longer time than ten days; and the person attached may at any time secure his or her discharge from custody by executing a recognizance with sufficient sureties, conditioned for the appearance of such person at the proper time as a witness in the cause or proceeding wherein the attachment may be issued."

Merciful! To hold witnesses in custody for ten days, or require them to give bail upon the *mere suspicion* that they "will unlawfully fail to obey" a command which had not been made, and of the intent to make they could not possibly have known! Out upon such cant! If you have the right to arbitrarily keep persons in custody ten days you can keep them ten years! In all infractions of "the law of the land" and violations of guaranteed rights it is the first step that costs. Make the precedent that Mormons have no rights you are bound to respect, and your invention will return to plague you or your posterity. "The design and objects of laws is to ascertain what is just, honorable, and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and im-

partial to all." This proposed legislation is not just, honorable, or expedient, and it is not to be proclaimed "as a general ordinance equal and impartial to all."

IV. The personal liberty of the citizen is, of course, subject to certain restraints which the law imposes for public reasons. But they are restraints clearly defined and of a general nature. Mr. Cooley enumerates them as follows :

" 1. Those imposed to prevent the commission of crime which is threatened. 2. Those in punishment of crime committed. 3. Those in punishment of contempts of court, or legislative bodies, or to render their jurisdiction effectual. 4. Those necessary to enforce the duty citizens owe in defence of the State. 5. Those which may become important to protect the community against the acts of those who, by reason of mental infirmity, are incapable of self-control."

If you are bent on making an exception against Mormons it would doubtless "rejoice and make exceeding glad" multitudes who exalteth the horn of their self-righteousness, and thank God that they are not as other men are, to have them dealt with, as it was seriously proposed to treat democrats, a few years since, in Louisiana, Mississippi, and Arkansas—have them declared *banditti* by act of Congress so that they could be tried by a military commission!

XII.

I. Section 3 extends the time within which prosecutions for bigamy, polygamy, or unlawful cohabitation, may be begun from *three* to *five* years. This is in keeping with the other provisions of the bill. Treason and other capital offences, wilful murder excepted, and all felonies and misdemeanors, must be prosecuted within *three* years.

" O judgment thou art fled to brutish beasts,
And men have lost their reason."

II. Section 5, under the guise of requiring records of marriages to be subject to inspection, authorizes search to be made for papers and records kept by officers of the Mormon Church respecting marriages, by any officer of justice appointed under the authority of the United States. All the ingenuity of the author of this bill has been exercised in the construction of sections 4 and 5. The former provides for the compulsory certification and recording of every

marriage ceremony, whether legal or otherwise, and requires everything to be set forth and attested by the signatures of all the parties present. It makes this certificate or a certified copy of the record thereof *prima facie* evidence in any civil or criminal proceeding "in which the matter may be drawn in question." Following this comes section 5, which appears to the casual reader merely to provide for the inspection by judicial officers of the public records of marriage ceremonies required to be kept by the preceding section and for their production in court when they are properly demanded.

This is not the scope or intent of the provision. The intention is to confer upon "any United States commissioner, justice, judge, or court, before whom any proceeding" in any bigamy, polygamy, or unlawful cohabitation case "shall be pending," to issue a search warrant to the United States marshal or any of his deputies authorizing forcible entry into any man's house to rummage for any documentary evidence they may *suspect* to exist which might assist the government in securing the conviction of the accused party or parties.

III. The men who made the constitution of the United States knew what grievous wrongs had been inflicted upon citizens of England and of the colonies by the exercise of arbitrary power in issuing and executing general search-warrants. The memorable speech of Otis, which Bancroft says was the beginning of the revolution, was against "writs of assistance" the royal governors of the colony of Massachusetts had procured to be issued by subservient judges to aid in the prosecution of freemen who dared to assert their rights against the minions as well as the mandates of an arbitrary king. The framers of our constitution made no declaration of rights because they provided for a government of limited powers, and, as they thought, set the general limits beyond which neither Congress nor the Executive would ever dare to go. Moreover, it had been definitely settled by the Courts of Common Pleas and of King's Bench, in the celebrated cases of Wilkes and Entick, that the right to issue general search-warrants had not existed at common law.

The maxim "that every man's house is his castle" was considered to be as much a part of the unwritten law of America as it was of England. But the people, jealous of their rights and fearful of encroachments upon their liberties by a strong

federal government, demanded a specific Bill of Rights which was added to the original constitution at the earliest practicable moment. When, therefore, it was declared that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," the intention was to prohibit any encroachments by the legislative, executive, or judicial branches of the general government upon the rights of the citizen which had been sacred at common law. "The poorest man may, in his cottage," said Lord Chatham, "bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dare not cross the threshold of the ruined tenement."

IV. The language of the fifth section of this bill is general, and leaves to the discretion of the magistrate, before whom proceedings are pending, to determine the materiality of the documentary evidence desired and suspected to exist, as well as to decide what shall be a "proper warrant" to issue, authorizing "any officer of justice appointed under the authority of the United States" to make search therefor. Judge Cooley says it is not—

"Allowable to invade one's privacy for the sole purpose of obtaining evidence against him,* except in a few special cases where that which is the subject of the crime is supposed to be concealed, and the public or the complainant has an interest in it, or in its destruction. Those special cases are familiar, and well understood in the law. Search-warrants have heretofore been allowed to search for stolen goods, for goods supposed to have been smuggled into the country in violation of the revenue laws, for implements of gaming or counterfeiting, for lottery tickets or

* In the case of *Boyd v. United States* just decided by the Supreme Court it was held that—

"It does not require actually entering upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the 4th amendment; a compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the amendment. The seizure or compulsory production of a man's papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and, in a prosecution for a crime, penalty, or forfeiture, is equally within the prohibition of the 5th amendment."

prohibited liquors kept for sale contrary to law, for obscene books and papers kept for sale or circulation, and for powder or other dangerous or explosive material so kept as to endanger the public safety. A statute which should permit the breaking and entering a man's house, and the examination of books and papers, with a view to discover the evidence of crime, might possibly not be void on constitutional grounds in some other cases, but the power of the legislature to authorize a resort to this process is one which can properly be exercised only in extreme cases, and it is better, oftentimes, that crime should go unpunished than that the citizen should be liable to have his premises invaded, his desks broken open, his private books, letters, and papers exposed to prying curiosity, and to the misconstructions of ignorant and suspicious persons; and all this under the direction of a mere ministerial officer, who brings with him such assistants as he pleases, and who will select them more often with reference to physical strength and courage than to their sensitive regard to the rights and feelings of others. To incline against the enactment of such laws is to incline to the side of safety. In principle they are objectionable; in the mode of execution they are necessarily odious; and they tend to invite abuse and to cover the commission of crime. We think it would generally be safe for the legislature to regard all those searches and seizures 'unreasonable,' which have hitherto been unknown to the law, and on that account to abstain from authorizing them; leaving parties and the public to the accustomed remedies." (Con. Lim., § 306, 307.)

Lord Hale says that warrants to search should always provide that search be made in the daytime, and points out the danger and inconvenience to the inmates of a house if the night-time is selected for the visitation. You will observe that section 5 of this bill is altogether silent on this subject. Statutes authorizing searches generally provide that they shall be made in the daytime. It is only in very special cases that searches at night are allowed.

V. As a rule, the men who perform the duties of deputy-marshals in any community are not regardful of the privacies and feelings of the inmates of the households into which they thrust themselves. For more than a year prosecutions have been conducted against Mormons with a rigor unequalled heretofore in the United States. The partial manner in which the law against unlawful cohabitation has been enforced, and the interposition of the power of the United States courts as a shield to protect non-Mormons who have offended against local statutes provided for the punishment of "lewd

and lascivious conduct," have induced the belief among the Mormons that they are being persecuted for opinion's sake. The result is an intense bitterness of feeling, which is not unnatural under the circumstances.

Houses are now raided by deputy-marshals, under cover of search-warrants, to capture persons supposed to be hiding there, against whom indictments have been found. Like raids are made to arrest and hale before United States commissioners persons charged with unlawful cohabitation for the purpose of placing them under bonds to await the action of the grand jury. The deputy-marshals go in strong force on these occasions, and their misconduct in executing these summary processes, as well as in serving subpoenas, is notorious. They insult and terrorize women, and generally conduct themselves in an indecent and unseemly manner.

VI. Some of these minions of the marshal's office lead dissolute and licentious lives. Social vice is unknown in strictly Mormon communities. But as the gentile population of Salt Lake City grew the leper-houses made their appearance and flourished. They were protected through the influence of the federal courts. All the attempts of the municipal authorities to drive out these evil-doers were successfully resisted. An over-zealous Mormon, Mr. B. Y. Hampton, conceived the idea of exposing the lewdness of those who are loudest in denouncing the evil effects of polygamist households on society in general. He was undoubtedly sincere in his desire to expose and punish crime. But his method was not a commendable one. However, he made use of the same sort of instruments that the federal government has for years employed to detect crime, spies, and decoys. He employed women of easy virtue, though not notorious characters, because those who plied their trade openly would not betray their regular customers. A number of the most blatant revilers of the Mormons eagerly bit at the bait offered them, and among the rest was the chief deputy-marshal—all of the lot being married men.

Arrests followed on charges of lewd and lascivious conduct under a city ordinance. One Oscar C. Vandercook, the chief deputy-marshal, was the first offender arrested. He sued out a *habeas corpus* from the District Court, and Judge Zane decided that the ordinance against lewd and lascivious conduct did not apply unless such conduct was public. Thereupon the arrests were made under a territorial

law for the punishment of those who resorted to houses of ill-fame for lewdness. In the meantime the grand jury then in session, which was constituted under the act of March 22, 1882, for the purpose of considering the special class of cases coming within the purview of that law, was directed by the court to investigate the subject of these arrests. Three members of this grand jury—non-Mormons—had been dismissed by the court because they declined to join in indicting persons whom the United States attorney insisted ought to be indicted. Three more subservient jurors were found to take the places of those who would not obey the district attorney. It was a packed grand jury. It promptly indicted B. Y. Hampton for conspiring with one of the women named Field to injure and defame certain citizens, and made to the court a flaming report, setting forth in indignant language the dreadful wickedness of the conspiracy and the reprehensible conduct of Hampton.

The prosecution of unlawful cohabitation cases was suspended and Hampton was tried, convicted, and sent to jail for one year. A jury was obtained by an open venire in order to exclude Mormons. This was a gross violation of law. It was simply "fixing" a jury to convict. Judge, district attorney, and marshal brought themselves clearly within the old statute against "evil procurers of dozens." The means the accused had used to detect crime was not the best, but it was probably the only kind that could have succeeded. There was no evidence even tending to show that Hampton had conspired with anybody. His previous good character was conclusively proved. His own evidence, in which he fully and frankly told all he had done, was not impeached. The sole object was to discredit the prosecutions for lewdness begun on evidence Hampton had been instrumental in procuring.

But the cases in the police court against the accused went on. The judge is a man of irreproachable character, whose impartiality is unquestioned. The hearings were fair. The evidence, independent of Hampton, was overwhelming and conclusive. Eight of the offenders were convicted and sentenced to pay a fine of \$299 each, and undergo imprisonment for three months. All the cases were appealed to the district court, where all of them were dismissed on motion of the Assistant United States Attorney, who came into court and refused to prosecute!

The men who were thus allowed to go scot-free were unquestion-

ably guilty. Their enlargement was under all the circumstances a grave mistake on the part of the court and the prosecuting officers. Immorality ought not to be encouraged. There should be no ground for even suspecting the integrity and impartiality of the federal judicial officers who are enforcing the law against Mormon offenders.

VII. Another reprehensible outrage upon the entire Mormon community by the federal officials has intensified the popular feeling. Immediately before the assembling of Congress a meeting was held at the Walker House in Salt Lake City, and arrangements made to have sensational and wholly untruthful dispatches sent to eastern newspapers representing a Mormon uprising as imminent. The governor of the territory carried out his part of the conspiracy by telegraphing to the President the most villainous lies, and representing an urgent necessity for additional troops to be quartered in the city. A deputy-marshal and a Mormon had met in an alley, and the latter struck at the former, who thereupon shot and desperately wounded his assailant. There was bad feeling between the two on account of a previous private quarrel. The deputy-marshal surrendered himself to his superior officer, and the Mormon was taken in charge by the police. It was simply a street brawl. There was no occasion for the interference of the federal officials. The deputy-marshal would undoubtedly have been released on bail, pending the action of the grand jury. But this did not suit the purposes of the unscrupulous men, who were determined to rouse the whole country and make capital against the Mormons. The deputy-marshal was ostentatiously placed under military protection at Fort Douglas.

You will remember the startling headlines in the newspapers announcing the threatened Mormon rebellion and the orders to the commanding generals of the departments of the west to hold all their troops in readiness for instant movement to Utah; how it was represented that armed Mormons were pouring into Salt Lake City from all parts of the territory; and that the military at Fort Douglas were under arms day and night, in hourly expectation of an assault; that a store of arms and ammunition was concealed in the city; that the deputy-marshal who had shot a Mormon attempting to assassinate him had to be rescued by the federal soldiers from a mob threatening to lynch him.

There was not one word of truth in these stories, or in the representations made to the President. They were baseless calumnies, monstrously wicked fabrications. And yet the President and the Secretary of War were deceived by them. They ordered a company of troops from Omaha to Salt Lake City, and this fact being telegraphed along with the sensational stories concocted by the governor and his co-conspirators caused widespread apprehension of serious trouble.

Can you conceive of grosser misconduct on the part of officials entrusted with such responsible and delicate duties in representing the federal government when all its tremendous power is being exerted to enforce harsh measures against a people whose religious feelings are as intense as those of the ancient Jews? That men who would be so shamelessly untruthful, who would trifle with such serious matters, are unfit to be where they are, must be admitted by every honest man.

Would it be wise and prudent to trust such men with the extraordinary power this bill would confer upon them? Even if the terms of section 5 do not confer power in conflict with Article IV of the amendments to the constitution, it is certain that in the execution thereof, the spirit of the guarantee against unreasonable searches and seizures would be grossly violated.

XIII.

I. Section 7 deprives the women of Utah of the right of suffrage conferred upon them by the legislative assembly fifteen years ago.

For years one of the gravest accusations against the Mormons was their suppression, oppression, and debasement of womankind. So little was the philosophy of religious enthusiasm and the strength of moral convictions understood that it was generally assumed that Mormon women were not free agents. They were believed to be little better than the bond-slaves of the lords of creation. They were given the ballot, and for fifteen years they have been the equals of the men at the polls. Because they have chosen to vote as their fathers, husbands, brothers, and lovers vote, it is proposed to punish them therefor by taking away this priceless boon of suffrage.

The act of March 22, 1882, disfranchised all polygamists, and it

was construed to include those who had been, as well as those who were, living in polygamy. The male whose wives were dead was still a polygamist, and the wives whose husband had died were held to be under the ban. But this punishment of those who were the victims of polygamy was not enough. It is proposed to punish all the women of Utah, Mormons and non-Mormons. Why? Because they do not vote as you want them to do.

II. The simple truth is that this is a blow at the political power of the Mormons. It is a step in the direction of disfranchising the whole body of the Mormon people. Are you prepared to do that? It is just about thirty years since a wave of religious fanaticism swept over several states of this Union, seriously threatening, and in many localities actually proscribing, Roman Catholic voters. The power of the Roman Catholic clergy over their parishioners, the allegiance which it was falsely claimed the Papal See exacted in antagonism to the duty the citizen owed the State; the danger of "one-man power," were the watchwords of the religious bigots, and political demagogues who advocated the disfranchisement and disqualification of all Romanists to vote or to hold office.

If we did not understand human nature we would never cease to marvel at that exhibition of gullibility in the middle of the nineteenth century. But history teaches us that credulity is always wedded to bigotry, intolerance, and fanaticism, and that demagogues never fail to avail themselves of these weaknesses of humanity. It is also unfortunately true that it is not the ignorant and the depraved alone who "professing themselves wise, they become fools." It was the chief priests and rulers of the Jews who headed the rabble and demanded of Pilate the release of a murderer, and insisted upon the crucifixion of Him whom the Roman Procurator, having examined, declared "I have found no cause of death in Him!" The accomplished Tacitus, the wise Pliny, and the excellent Trajan appear to have believed "the most monstrous calumnies that human mendacity ever forged" concerning the early christians. Nine-tenths of the English people accepted as gospel truth the preposterous perjuries of Oates, Bedloe, and Dangerfield, because they happened to jump with the humor of the nation towards the Roman Catholics.

If the bestowal of suffrage upon females was deemed unwise or

impolitic, you would not stop with its prohibition in Utah but would forbid it in Wyoming also. The omission to do so is therefore a confession that this is a special act, aimed at a particular class of females. Why this discrimination? It is not because of the mental incapacity or of the ignorance of the Mormon women, for the evidence to the contrary is so abundant and so notorious that it would be an insult to your intelligence to suppose that you believed such a slander. Petty pretexts, paltry pretences, frivolous excuses, may be advanced "to save your consciences" for voting to inflict the penalty of disfranchisement upon Mormon women, but the naked, ugly fact will stand out in all its hideousness that they were punished for their religious belief. For you may believe that Mormon men uphold polygamy for other reasons than belief in the revelation concerning celestial marriages, received through Joseph Smith, but you cannot pretend to believe that Mormon women voluntarily support an institution which must cause poignant griefs and secret heart-burnings, if they were not animated by a religious conviction profoundly intense and marvellously self-satisfying in its character.

XIV.

I. Section 8 is superfluous legislation. There are no "laws of the legislative assembly of Utah which provide for numbering or identifying the votes of electors." The author of the bill has either been imposed upon, or he has chosen this indirect way of prohibiting what has not been done and what was probably never contemplated. It is indefensible legislation because it assumes an evil to exist which never existed, thus slandering by implication.

II. Section 9 is meant to deprive probate judges in Utah territory of the jurisdiction conferred upon them in accordance with the provisions of the act of Congress approved March 2, 1867, in regard to entering town sites in trust for the use and benefit of the occupants thereof. The object is to transfer this trusteeship and the adjudication of the rights of settlers to the district courts of the territory. It will subject settlers to unnecessary expense and hardship because there are but three district courts in the territory, and in many instances, perhaps in the majority of cases, the litigants or claimants will have to travel hundreds of miles. The right of ap-

peal from the decisions of probate judges has always existed; and it is a fact, worthy of attention, that every case carried up to the Supreme Court of the United States in which the district and supreme courts of Utah overruled the findings of the probate court of Salt Lake county, the latter was invariably sustained.

The act of Congress approved June 23, 1874, took away from the probate courts of Utah all jurisdiction in civil, chancery, and criminal cases. They were allowed to retain jurisdiction in divorce suits for statutory causes, but the defendants were given the right to have the suits removed to the district courts. As nineteen-twentieths of the population of Utah are Mormons it would seem that the trusteeship of town-site property might safely be allowed to remain where it is, especially as the cases remaining to be disposed of affect the rights of Mormons only. The transfer will simply swell the fees of clerks of district courts who do not account to the United States for the emoluments of their offices. They are the sons, relatives, or close friends of the judges and it is scarcely a secret that a large share of their perquisites go to the judges.

III. Section 10 prohibits illegitimate children from sharing in the estate of the father. The innocent victims are to be punished for the sins of their fathers! Monstrous! Those who are responsible for offsprings ought to be compelled to provide therefor rather than to be relieved of responsibility. The law of Utah in regard to illegitimate children inheriting is as follows:

"Every illegitimate child is, in all cases, an heir to its mother. It is also heir to its father when acknowledged by him."

This is merely merciful. The state ought to compel the man who wrongs a woman to care for her thereafter, and should make the offspring his heir at law.

XV.

I. Section 12 makes the United States, through fourteen trustees, to be appointed by the President, by and with the advice and consent of the Senate, the custodian, manager, and procurator of all the real and personal property of the Church of Jesus Christ of Latter-day Saints.

That church was incorporated by an act of the provisional govern-

ment of the State of Deseret in 1850, which act was, in 1851, confirmed by the legislative assembly of the territory of Utah. This was done in accordance with the generally recognized principle of law which permits all the adherents or communicants of a church, or as it is expressed in the New York Statute of 1784, "the congregation or electors embracing all the stated hearers or attendants on divine worship who are competent to vote for trustees," to be incorporated into a religious establishment.

The act of incorporation provided (sec. 2) that:

"The said body or church, as a religious society, may, at a general or special conference, elect one trustee-in-trust, and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use, and control the real and personal property of said church, which said property shall be free from taxation,* which trustee and assistant trustees, when elected or appointed, shall give bond with approved security in whatever sum the said conference may deem sufficient for the faithful performance of their several duties; * * * and when said bonds are filed and said certificate recorded, said trustee or assistant trustees may receive property, real and personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness, or the rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well-being of said church."

It was also provided, (sec. 3:)

"That as said church holds the constitutional and original right, in common with all civil and religious communities, 'to worship God according to the dictates of conscience;' to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all."

It is also declared that said church—

"Does, and shall, possess and enjoy continually the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions, for the good, order, safety, government, convenience, comfort, and control of said church, and for the punishment or forgiveness of all offences relative to fellowship, according to the church covenants; that the

* All church property not in actual use for religious worship is now taxed. (Sec. 359, Comp. Laws of Utah.)

pursuit of bliss and the enjoyment of life in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally be questioned: *Provided*, however, that each and every act, or practice so established, or adopted for law, or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices, or performances, support virtue and increase morality, and are not inconsistent with, or repugnant to, the constitution of the United States, or of this state, and are founded in the revelations of the Lord."

II. There are no powers granted by this act which the laws of any state or of the United States forbid to religious corporations. It is unusual for religious establishments to set forth in their charter ecclesiastical powers inasmuch as the general law of the land recognizes the spiritual authority of religious organizations or associations to prescribe all rules, ordinances, and regulations for their government in matters of faith, fellowship, doctrines, and covenants. But there is nothing illegal in the formal recognition of this universally admitted right by the civil authorities. When Congress determined to enact a law in 1862 against polygamy, the intention was to disapprove of, and annul, the act incorporating the Church of Jesus Christ of Latter-day Saints, but lest this might seem to be a law "respecting an establishment of religion" and "prohibiting the free exercise thereof," a saving clause was inserted.

It was assumed, however, that certain words in the act of incorporation, to wit, "to solemnize marriage compatible with the revelations of Jesus Christ," was in some way a recognition by the civil authority of the creed of the Mormon Church concerning plural marriages. Whereupon Congress, while recognizing that it could "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," declared its purpose "to annul all acts and laws which establish, maintain, protect, or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances." It has heretofore been pointed out that it was a mere assumption on the part of Congress that the words, "to solemnize marriage compatible with the revelations of Jesus Christ," were an assertion of the right of the Church to authorize plural marriages. The sentence of which these words were a part was merely declara-

tory of one among other rights the church held "in common with all civil and religious communities," namely, "to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ."

III. However we may differ in opinion as to the power of Congress to make any part of the faith of a church *malum prohibitum*, and forbid the practice thereof, we will surely agree that Congress cannot intrude the government of the United States into a church organization under any pretence whatever.

It was stontly maintained by all who advocated the adoption of the constitution, as it came from the convention, that the government created for the United States could in no manner whatever interfere in matters of religion. Jefferson, who was in France as the minister of the confederated states at the time, was the first to sound the alarm because the convention had not embodied in their work a bill of rights. The adoption of the constitution was almost defeated because of this omission. Four states, required to make the necessary number approving, only yielded their approval with the understanding that a bill of rights was to be provided at the earliest practicable day.

The debates in the conventions of the different states, upon the ratification of the constitution, show that there were three different views entertained in regard to the subject of religion being completely ignored by the constitutional convention. First, it was held by one class that the government, being one of limited powers, could only deal with those subjects specifically enumerated, concerning which jurisdiction had been granted; that all men were, therefore, left free to hold and exercise whatever religious faith they saw fit to have or practise. Second, it was contended by another set that the failure to recognize God and fix some standard of religion would permit Infidels, Pagans, Mohammedans, Hindoos, and Jews, not only to practise their false faith, but to hold office. Third, still others maintained that it was not safe to trust so important a matter as the rights of conscience to "the chances and changes of time."

But four of the thirteen colonies, New Hampshire, New York,

Pennsylvania, and Virginia,* in dissolving their relations with Great Britain, provided in their declaration of rights for absolute freedom in matters of religious belief. And yet there can be no question that the overwhelming sentiment of the masses was in favor of unrestrained rights of conscience in the faith and practice of religion. It would have been strange indeed if they had not been in favor of making doubly sure the freedom of religious worship. Those of them who were not the descendants of men and women who had fled from religious persecutions in other lands, and imbibed along with their mothers' milk, hatred of ecclesiastical tyranny, knew, either from oral tradition or written history, the awful story of murder, rapine, misery, woe, and suffering caused by the attempts, a century previous, to enforce uniformity in the belief and practice of the christian religion.

The early fanaticism and intolerance of the New Englanders, the general manifestation of hatred toward the Quakers, the unconcealed willingness of the Virginia Episcopalians to persecute the

* Article XXXVIII, Constitution of New York, 1777 :

"And whereas we are required, by the benevolent principles of national liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind; this convention doth further, in the name and by the authority of the good people of this state, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind."

Article V, Bill of Rights, New Hampshire, 1784 :

"Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason; and no subject shall be hurt, molested, or restrained in his person, liberty, or estate for worshipping God, in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace, or disturb others in their religious worship."

Article II, Declaration of Rights, Pennsylvania, 1776 :

"That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding; and that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent; nor can any man, who acknowledges the being of a God, be justly deprived or bridged of any civil right as a citizen on account of his religious sentiments or peculiar mode of religious worship; and that no authority can or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control, the right of conscience in the free exercise of religious worship."

Section XVI, Virginia Bill of Rights, 1776 :

"That religion, or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other."

Presbyterians, the discriminations in the old laws of nearly every colony against Roman Catholics, the religious test requirements of office-holders in all the colonies, except Rhode Island, Pennsylvania, and Delaware, satisfied all reflecting patriots that nothing short of absolute liberty of conscience would save the New World from the curse of the Old.

Moreover, the contact with nature, the absence of many of the restraints of highly civilized life, the enforced habit of self-reliance, and the exercise of independent judgment, insensibly wrought upon their mental characteristics. Forced to act and think for themselves, they naturally acquired an independence of thought in regard to political and religious matters which prepared them to resist encroachments, from whatever quarter, upon their "unalienable rights." It was the age of metaphysical inquiry, of economic studies, and of daring polemics in the religious as well as the political field of thought. The labors of Bacon and Locke, Montesquieu and Sidney, were bearing fruit among English-speaking people. The liberally educated drank deep at the perennial spring of Greek and Roman literature, and in the controversy with the mother country, the American champions drew their arguments and illustrations largely from the philosophers, historians, and orators of Athens and Rome. The independence of thought, breadth of view, and catholic understanding of the men who led the revolt of the colonies, sustained the cause of the revolution, and laid the foundation of our government, have rarely been equalled at any other period of the world's history.

IV. The two greatest of those great apostles of human liberty were Thomas Jefferson and James Madison. Washington was doubtless the most evenly balanced, perfectly poised and rounded public character that ever lived. Hamilton was greatest of all in pure intellect, but his soul was absorbed with the idea of building a great nation, and his sympathies were not with the masses. Jefferson and Madison were the especial champions of religious liberty. The former drew, in 1777, the bill providing for absolute freedom of conscience which the latter, with some verbal alterations in the eloquent preamble, carried through the Virginia legislature in 1785. Both regarded their labors in this cause as especially deserving of gratitude from their countrymen, and Jefferson directed

that the fact that he was the author of the bill should be engraved on his tombstone.

Jefferson and Madison were, therefore, consistent in insisting upon an amendment to the constitution of the United States which would make impossible, so long as that great charter was observed in letter and spirit, any legislation by Congress inimical to the most perfect freedom of belief and practice in matters of religion. Mr. Madison was the principal author of the first ten amendments which comprise our Bill of Rights. Their scope and purpose are to be settled by the interpretation which Jefferson and Madison gave them.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Jefferson in his autobiography states that he drew the bill for the establishment of religious freedom in Virginia, "in all the latitude of reason and right," and shows, by relating an incident which occurred when it was under consideration in the Assembly, that those who enacted the law *"meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and the Mohammedan, the Hindoo and Infidel of every denomination."*

Madison, in 1776, while a member of the Assembly, expressed his idea of the scope that men should have in religious belief and practice, by an amendment he offered to Col. George Mason's draft of a "Declaration of Rights" for the people of Virginia. Col. Mason's draft was as follows, on the subject of religion :

"That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and all men should therefore enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestricted by the magistrate, unless under color of religion any man disturb the peace, the happiness, or safety of society."

Mr. Madison proposed to amend by striking out from "violence" and substituting—

"And therefore all men are equally entitled to the full and free exercise of religion, according to the dictates of conscience, and no man or class of men ought, on account of religion, to be invested with peculiar emoluments or privileges, nor subjected to any penalties or disabilities, unless, under color of religion, the preservation of equal liberty and the existence of the State are manifestly endangered."

The words, "peculiar emoluments or privileges," were objectionable to the friends of the established church in the Assembly, and the result was that the sixteenth section of the Declaration of Rights as finally agreed upon was as follows:

"That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise christian forbearance, love, and charity to each other."

We have seen that Jefferson held that the act establishing religious freedom in Virginia was "meant to comprehend, within the mantle of its protection, the Jew and Gentile, the Christian and the Mohammedan, the Hindoo and Infidel of every denomination." Mr. Madison, in support of the measure, declared—

"That the only proper objects of civil government are the happiness and protection of men in the present state of existence, the security of the life, liberty, and property of the citizens, and to restrain the vicious and encourage the virtuous by wholesome laws, equally extending to every individual; but that the duty they owe their Creator, and the manner of discharging it, can only be directed by reason and conviction, and is nowhere cognizable but at the tribunal of the Universal Judge."

V. But let us examine the language of the first amendment. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Mr. George Mifflin Dallas said: "The constitution, in its words, is plain and intelligible, and it is meant for the home-bred, unsophisticated understandings of our fellow-citizens." Chief-Justice Marshall, in *Gibbon v. Ogden*, (9 Wheat., 188,) declared that, "As men, whose intentions require no concealments, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their *natural sense*, and to have *intended* what they said." The Supreme Court of Indiana, in *Wolcott v. Wigton*, (7 Ind., 49,) where the construction of the constitution of that state was involved, said: "In such instruments, the people will be presumed to have expressed themselves in careful and measured terms, corresponding

with the immense importance of the powers delegated, leaving as little as possible to implication." Judge Bronson, in *Purdy v. People*, (2 Hall, 31,) said: "We are not at liberty to presume that the framers of the constitution, or the people who adopted it, did not understand the force of language." Judge Cooley, in *Constitutional Limitations*, (§ 50,) says: "Narrow and technical reasoning is misplaced when it is brought to bear upon an instrument framed by the people themselves for themselves, and designed as a chart upon which every man, learned and unlearned, may be able to trace the leading principles of government."

"Respecting an establishment of religion," means, "with regard or relation to, or concerning a religious establishment, or ecclesiastical form of government." Congress shall make no law with regard to, with relation to, or concerning, a religious establishment, or ecclesiastical form of government. It means more than that "Congress shall make no law establishing a religion," because, if that had been the intention, the framers of the amendment would have used "the words which most directly and aptly express" the idea they intended to convey.

If you enact a law empowering the President of the United States, by and with the advice and consent of the Senate, to appoint a majority of the trustees of the Mormon Church, you will do what the constitution says you shall not do. The Mormon Church is an establishment of religion, a religious establishment, and a law taking away from those "who are competent to vote for trustees" the right to elect those officers would be a law vitally "concerning" or "respecting" it. The right to hold and manage church property is essential to "the free exercise of religion."

VI. The relations of the civil authority to religious establishments has been a cause of great perplexity to the courts. The difficulty was, in the earlier cases, to determine how far a court of law or equity could venture to interfere in the adjustment of property rights when disputes arose in religious corporations, or associations, in regard thereto. The status of religious organizations in the United States was entirely different from that of church establishments in England, and it was not till a comparatively recent period that the law, in regard to the charitable use of property purchased or bequeathed for specific religious purposes, was considered settled.

And, moreover, the Statute of Uses, which never applied in the colonies, largely determined the decisions of the Lord Chancellors in the test cases. Therefore, when the courts of the different states of the Union were first obliged to pass upon the rights of disputants to property bought or bequeathed for religious objects, they could derive little or no assistance from the great source to which they naturally looked for guidance.

The leading cases in which the whole subject of religious corporations and the power of the courts as affecting the rights of the property thereof, are those ~~determined in the~~ Chancery Court, the ~~Supreme~~ Courts, and the Court for the Correction of Errors in New York State. Chancellor Walworth, in the cases of *The Baptist Church of Hartford v. Witherill*, (3 Paige, 304,) *Reformed Protestant Church v. Mott*, (7 Paige, 79,) *Lawyer v. Cipperly*, (7 Paige, 281,) held that the trustees chosen by the congregation, or electors, embracing all the stated hearers or attendants on divine worship who are competent to vote, must determine how the temporalities of the church, society, or corporation were to be improved, used, and managed, for the benefit of all the stated hearers and the communicants as far as practical. The court would assume no responsibility in matters of faith. That was not its province, and if it had the inclination it had not the power. "For myself," he said in *Baptist Church of Hartford v. Witherill*, "although my opinions are fixed and settled as to the essential doctrines of christianity, as taught in the church to which I belong, I am unwilling, as a civil judge, to assume the responsibility of deciding upon the correctness of the religious tenets of others, either in matters of faith or otherwise."

In *Miller v. Gamble*, (2 Denio, 492,) Chancellor Walworth, following the decisions of the Lord Chancellor of England in recent cases, departed from his former rulings, and decided that the use of the property of the church must be determined by the intention of the original purchasers or testators, and if the majority of the stated hearers and communicants had departed from the faith of their predecessors, the minority who remained true to the original creed were entitled to the property. This decision was overruled by the Court of Errors. A very famous case, *Robertson v. Bullions*, (9 Barb., 64,) involved the same question at issue in *Miller v. Gamble*, and Judge Hand, of the Supreme Court, delivered

a very elaborate opinion in which the whole subject of religious corporations and their property rights are discussed. The following, from the syllabus, give the important points decided:

"1. The late Court of Chancery in this state had no power to remove an officer of a religious corporation; or to disfranchise a member thereof; or to interfere with, or control, directly or indirectly, the election of its officers; or to declare their election void."

"3. The Court of Chancery, in many cases, and by virtue of its general jurisdiction over them, may enforce trusts; and when a corporation acts merely as a trustee, and abuses the trust, it can be divested of it. *But the court cannot take from a religious corporation its own property nor the management of it from its trustees duly elected, nor divest the latter thereof, nor take it out of their possession.*"

"9. There is no power in the state, legislative, executive, or judicial, which can interfere with the complete religious liberty secured by the constitution."

In the case of *Watson v. Jones*, (13 Wallace, 679,) a case over which the whole state of Kentucky was wrought up to a high pitch of excitement, the Supreme Court of the United States held that the courts will interfere to see that property is ~~not~~ diverted from the purpose for which purchased or given; and the principle of organization will be considered—whether it is independent or one of a number under a general ecclesiastical control—in determining questions of departure from faith. The rule of Chief-Justice Gibson in *German Reformed Church v. Seibert*, (3 Barr, 291,) was adopted by the Supreme Court in taking cognizance of questions of adherence to, or departure from, faith: "The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offence against the Word of God and the discipline of the church."

Religious associations without corporate existence can hold property. (*Glendale U. Christian Society v. Brown*, 109 Mass., 165.) Independent congregational organizations, determining all matters of faith and practices for themselves, decide, by the majority rule, all their temporal concerns also.

The extent of the civil authority, according to the settled rule of law as laid down in the cases quoted, in respect to religious corporations, or associations, is limited to questions affecting the rights of property. And in the exercise of this power the courts must gen-

erally be restrictive and not mandatory, allowing the exercise of wide discretion and religious freedom to the chosen officers of the corporations, associations, or societies. Trusts may be enforced, and if the corporation itself is a trustee, and abuses the trust, it may be divested of it. But under no circumstances can a religious corporation be deprived of its property, or its duly elected trustees divested of its management. There can be no inquiry as to questions of faith save for the purpose of ascertaining the rights of property in dispute, and in such cases the civil authority is bound by the decisions of the general ecclesiastical tribunal, if there is one, regulating the government of each particular church in such matters, or by the decision of the majority in independent religious associations. The minority which refuses to be bound by the judgment of the recognized ecclesiastical tribunal has no rights in the property although they may have contributed to the fund out of which it was paid for.

VII. It is proposed that Congress shall do to the Mormon Church what the courts cannot do in any state in this Union in the event of a dispute over the property of a religious corporation by the parties in interest. The long arms of a court of chancery cannot reach within the sacred precincts unless there is a breach of trust established, and then it can only exercise a restrictive and not a mandatory power.

There is no breach of trust alleged, no charge of a violation of contract, express or implied, in respect to the Mormon Church establishment. It is to be an exercise of arbitrary power by the legislative department of the government in the face of a positive prohibition of the constitution.

There is no allegation that the title to the property of the Mormon Church is not perfect. There is no pretence that the objects and purposes for which this property was bestowed upon the church, or purchase by it out of the funds of the common treasury, are not being faithfully observed by the officers of the corporation.

If there was no constitutional prohibition the government of the United States could not lay felonious hands upon the property of the Mormon Church without an infraction of "the law of the land," which is the common and unalienable heritage of the whole body of the people. If the Congress of the United States can intrude itself

into one religious corporation it can exercise the same arbitrary power in respect to all others. If it can make a law giving the President of the United States the appointment of a majority of the trustees of the Church of Jesus Christ of Latter-day Saints, who are to assume the control and management of the temporalities of that corporation, it can do the same thing with any or all the civil and religious corporate bodies in any or all of the territories; nay, more, it can take away from any individual citizen, who may be so unfortunate as to own property outside a state, his right to manage his own business.

No absolute government, no revolutionary assembly, unfettered and unrestrained by ought save the will of the reigning tyrant, or the vague notions of an imaginary Social Contract, ever attempted a more villanous invasion of the rights of property!

VIII. The ecclesiastical organization of the Mormon Church in some of its features is modelled after that of the Methodist Episcopal Church. It has its local and general conferences. The democratic principle lies at the foundation. There are Wards and Stakes of Zion, and elders, bishops, priests, teachers, and deacons look after the temporalities of the church. Each congregation, in a Ward, is an organization, incorporated under the general law of the territory, and owns in its own right all the church property within that territorial division. There is a presiding deacon over twelve deacons, a presiding teacher over twenty-four teachers, a bishop over forty-eight priests, a presiding elder over ninety-six elders. The presiding elder has a Stake of Zion which is made up of several Wards. The tithes are paid in kind to bishops and are frequently expended within a Stake.

The local conferences in the different Stakes, held quarterly, elect their local officers, and all the Stakes, represented in semi-annual general conferences, elect the general officers of the whole church.

More arrant nonsense or grosser ignorance was never displayed than by those who talk of "the one-man power" of the Mormon Church. There is an executive head which is the first presidency, but the three who compose this head must be supported by the twelve, and they in turn by the quorums of seventies, and they in turn by the whole body of the church. The singular strength, the wonderful power of the Mormon Church, is due to its masterly

organization, which, supplemented by the zeal, faith, and lively interest of the whole body of the people, makes it indeed a marvellously potent religious factor.

IX. The circumstances under which the act incorporating the Church of Jesus Christ of Latter-day Saints was passed in 1850, and subsequently confirmed in 1851, should be taken into consideration. The Mormons had, in defiance of law and justice, been driven out of three states by mob violence, which was either winked at, aided, or not controlled by the civil authorities. Their loss of property, their sufferings "for conscience sake," had been very great. They had made an unparalleled journey of nearly 2,000 miles across a country uninhabited, save by savage Indians, to find a refuge where they might worship God "according to the faith within them." They found a desert land, which the concurrent testimony of all previous white visitors pronounced an irreclaimable waste place. Their heroic endeavors, their wonderful perseverance, industry, and skill triumphed over seemingly insurmountable obstacles. Untold privations, dreadful sufferings, awful hunger, dread of hostile, savage foes, were endured with patient fortitude and unflinching faith in Him who "made His own people to go forth like sheep, and guided them in the wilderness like a flock."

Their reward came in due season. The land proved fertile when the water which they led upon it had removed from the soil the excessive mineral deposits. The climate was genial and healthy. The savage Indians yielded to kind and considerate treatment. Within four years nearly fifteen thousand people of the Mormon faith were gathered in the valley of Great Salt Lake, and numerous settlements had been made at different points. The discovery of gold in California attracted a tide of emigration from the East, and the trail across the plains and over the mountains made by the Mormons became the transcontinental highway. Their pioneer labors, their settlements along the way, their accumulations of the necessaries of life, and their generous hospitality alone made the overland route practicable without enormous expenditure of money and frightful sacrifice of life. When we consider the persecutions they had passed through, the indignities put upon them, the cruelty, the cowardly treachery of state governments, the cold, niggardly treatment by the national government, the conduct of the Mor-

mons to the emigrants flocking to the Pacific coast must elicit our highest praise.

Although they had sought out this far distant and uninviting land at a time when it was under the flag of Mexico; although they had contributed 520 of their able-bodied men to help seize and hold upper California, which was within a hair's breadth of passing into the control of Great Britain; although they had made practicable not only a transcontinental highway, but the settlement and development of the vast region lying between the Rocky Mountains and the Sierras; although they had accomplished these wonderful works and made possible the marvellous things which otherwise would have required, in all human probability, a century of time and vast sacrifices of blood and treasure, they were vouchsafed no recognition—not even words of encouragement—by the general government.

The rush of emigrants to California left stranded among them some of the worst elements of the civilized (?) society which had expelled them from Missouri and Illinois. They had to organize a form of government to secure themselves protection against the wicked and the ungodly who came upon them. It was but natural that a religious people's first thought should have been to provide for the legal organization of their church which had been, and was to be to them, the ark of their safety. When the general government provided a territorial government, was it unnatural that they should hasten to have the act incorporating their church confirmed?

The object of that incorporation was not the aggrandizement of the church. The purpose was not to build up an overshadowing ecclesiastical power. They were grateful for the manifold blessings the Giver of all good had vouchsafed unto them, and they manifested their gratitude by providing liberally for the maintenance of His church. For the time being it was necessary that their gifts should be held by one corporate body. But this was only a temporary expedient. As their settlements extended and Wards and Stakes became numerous, congregational corporations were formed and lands and other property gradually came to be held in severalties. The provisions of the act of incorporation of the Church of Jesus Christ of Latter-day Saints, in regard to the trustee-in-trust, were practically succeeded by the community system, and so far as the ownership, control, and management of the property of the

church is concerned, the democratic principle everywhere prevails.

X. Do you propose to enact into a law this bill, with section 12 providing for the intrusion of fourteen trustees, who will, as you well know, endeavor forthwith, by one or another legal proceeding, to grasp complete control of all the property of the Mormon Church? Do you propose to disobey the constitution by not only interfering with a religious establishment, *but by creating one* which is to be managed by persons appointed by the President and confirmed by the Senate?

Examine the wording of section 12. Under pretence of disapproving and annulling some part of an act of incorporation, it is really amended. Even if this was, in this particular case, within the scope of congressional power, it would be dishonest legislation. The fourteen trustees, who are to be thrust into the Mormon religious corporation, are to "have and exercise all the powers and functions of trustees and assistant trustees provided for in the laws creating, amending, or continuing said corporation, which trustees, so appointed, shall hold their respective offices for the term of two years; and the trustees of said corporation shall annually, or oftener, make full report to the Secretary of the Interior embracing all the property, business affairs, and operations of said corporation; and the legislative assembly of the territory of Utah shall not have power to change the laws respecting said corporation without the approval of Congress." "The powers and functions" of the trustee-in-trust and his twelve assistant trustees, provided for in the act of incorporation, which are to be conferred upon the fourteen intruders by this amendatory act of Congress, are "to receive, hold, buy, sell, manage, use, and control the real and personal property of said Church" of Jesus Christ of Latter-day Saints.

XI. The author of this bill announced in the Senate that the Mormon Church was employing the proceeds of its property for the purpose of defeating the ends of justice, and therefore he proposed to take away from its duly chosen and elected officers the control and management of the same. This is a mere assumption on his part. It is a notorious fact, published to the world, that the Mormon people, by voluntary contributions, created a "defence fund," not for any unlawful object, but simply to provide the means

of securing a regular legal and honorable defence in the courts for those of their brethren who were accused of violations of the laws of Congress.

But grant, for argument's sake, that the officials of the church are using the revenues thereof for the purpose of securing its impetuous adherents, accused of crime, fair trials in the courts, would you be so inhuman as to prohibit this if you had the power so to do? You have not the power. There is not one single complaint of a misuse of the funds of the Mormon Church by any living soul who has the shadow of a right to complain. Before the civil authority dare to meddle with the property rights of a religious corporation, there must be not only *allegations* but *PROOF* of violation of trust or breach of contract.

XVI.

I. Section 13 makes it "the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved July 1, 1862." This section provided that "no corporation or association for religious or charitable purposes shall acquire or hold real estate in any territory, during the existence of the territorial government, of a greater value than \$50,000; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheated to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section."

The property forfeited and escheated under the proceedings to be instituted and prosecuted by the Attorney-General are to be disposed of by the Secretary of the Interior, and the proceeds to be applied to the use and benefit of the common schools of the territory in which the property may be. A proviso exempts any building, and the grounds appurtenant thereto, "which is held and occupied exclusively for purposes of the worship of God."

Does this proviso mean that, in addition to the real estate of the value of \$50,000, the buildings and grounds appurtenant thereto "held and occupied exclusively for purposes of the worship of God" shall be exempted? This would be the natural inference; but let us have a clear expression of the intent of the legislature.

II. Section 14 provides, that in proceedings for the enforcement of the forfeiture and escheatment of property acquired since 1862 in excess of \$50,000 in value, that there shall be summary process "to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever."

The laws of the territory of Utah, in relation to transfers of real property, are as follows:

"That to be valid, a transfer must be witnessed by two or more competent persons; be acknowledged before some person authorized to take acknowledgements; be recorded; and the record, page, and book be certified thereon by the recorder in the county where the property is located. (Sec. 614, Compiled Laws of Utah.)

"That every conveyance of real estate, and every instrument of writing, setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged, and certified in the manner prescribed by this act, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto, without such record, and to all other persons who have had actual notice. (Sec. 618, Compiled Laws of Utah.)

"That every conveyance of real estate within this territory hereafter made, which shall not be recorded as provided in this act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded." (Sec. 620, Compiled Laws of Utah.)

Since, therefore, all transfers of real estate in Utah shall, to be valid, be of record, why this provision "to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever?" Is it merely inquisitorial? That it would be so employed who can doubt? The public records show who are the owners of all real estate, and disclose the nature of the estate therein. If any holder of a trust estate should be compelled to produce books, records, papers, and documents, ought not there to be a limitation of some kind specifying that such books, records, papers, and documents as relate to the holding, controlling, and managing of the said trust

estate? There should, moreover, be some sort of proof required to establish a basis for reasonable belief that any person holding, controlling, or managing real estate was covering up in some way the right, title, or interest of the church, before "power in a summary way" could be exercised to compel him to produce "all his books, records, papers, and documents."

If you are going to enact "partial and unusual laws," do throw about summary processes, search-warrants, and other extraordinary powers, some of the restrictions and limitations which common decency, no less than constitutional provisions, require.

XVII.

I. Sections 15 and 16 annul the act of incorporation for the Perpetual Emigration Fund Company, and empowers the Attorney-General of the United States to cause proceedings to be instituted in the Supreme Court of Utah to dissolve the said corporation and pay the debts and dispose of the property and assets thereof according to law.

This company, about which so much has been said and which is assumed to have a vast accumulation of assets, never had any considerable amount of property. The origin of the Perpetual Emigration Fund was as follows: When the exodus from Nauvoo was forced upon the Mormons they, in obedience to a direct commandment, pushed forward the completion of their temple. The pioneer company was then marking out the way for the main body in the wilderness. The temple being completed and dedicated, a solemn covenant was entered into, whereby the strong and the fortunate, who found a refuge and a gathering place in the unexplored region beyond the Rocky Mountains, pledged themselves that with God's assistance they would bring thither those of their brethren whom sickness, age, and other misfortunes had impoverished or otherwise rendered helpless. It was a noble pledge and right nobly has it been redeemed!

While the first emigrants were struggling for existence in the desert valley of Great Salt Lake, they sent back to the states means to bring on those whose circumstances were such that without assistance they could not join their brethren. This good work was persevered in until all who had been left behind had been brought

to the new Zion. The general prosperity that blessed the saints in their new abiding place enabled those who had been assisted to come thither, to restore with interest that which had been expended in their behalf. It was then determined that a common fund should be made of the sums, thus repaid, which should be employed to assist worthy brethren through the world to come to Utah.

This fund, thus created, was made perpetual and placed under the management of a corporate body. Persons who have friends in other lands, and are desirous of assisting them to join them in Utah, sometimes place with the Perpetual Emigration Fund Company, for safe keeping, small sums of money saved from time to time from their earnings, and when the accumulation is sufficient it is, by their direction, expended to assist the persons they designate to come to the United States. It is a common understanding, though in no way compulsory, that those assisted shall pay to the emigration fund the amount of money thus advanced to them.

II. It is not true that the Mormon Church expends large sums of money annually to bring its converts to the United States. It is an absolute rule, intended to inculcate habits of self-denial and economy, that before any one of its adherents in the old country can receive assistance to emigrate, that he or she must have saved sufficient to defray half the expenses of the journey, the other half being advanced by the Perpetual Emigration Fund Company on condition of its repayment. It is a sacred debt, but very rarely have compulsory means been employed to enforce settlement thereof.

Upon the celebration of the year of jubilee, the fiftieth anniversary of the church, in 1880, one-half of the indebtedness to the Perpetual Emigration Fund Company was forgiven.

One of the cardinal principles of the Mormon Church is to encourage industry, thrift, and economy. Another is to inculcate the observance of all obligations assumed, whether to God or man. Persons who have made the passage from Liverpool to New York, on one of Williams and Guion's steamers, cannot have failed to notice with admiration the orderly conduct and perfect demeanor of the Mormon emigrants. That line has for more than forty years carried the Mormon emigrants from Liverpool to New York, and the testimony the officers bear to the character of the Mormon missionaries and their recruits is unqualifiedly high.

It is a sight well worth witnessing to see a body of these emigrants arrive in Salt Lake City. Notice of the coming is always published some time in advance, and friends of those expected are awaiting their arrival. Within twenty-four hours the emigrants will be on their way to the different settlements, where provision has been made for them. If you will, a few years later, visit the localities where these new-comers have settled, you cannot fail to observe the wonderful progress they have made in material welfare as well as in social advancement. In ninety-nine cases out of every hundred they have a piece of land; a comfortable house. There are troops of children well clad, whose bright, intelligent faces show what common-school education is doing for them.

I know whereof I speak. I have traversed the territory of Utah, from Idaho to Arizona, and have visited every principal settlement within its borders. I have freely mingled with all classes; have been the guest of the rich, and have shared the frugal meal of the poor. I have attended their local and general conferences, and have visited their schools. I have made long journeys in company with emigrants, and have lived in camps with Mormon cow-boys. I have observed all phases of life among these people, and unhesitatingly affirm that in general intelligence, industry, thrift, sobriety, honesty, and good morals, I have never met their equals. Their religion is not ostentatious, but it is marked by simplicity of faith, earnestness of purpose, and unswerving confidence. Their loyalty, their devotion to the government, is unqualified. Better citizens, a more worthy and deserving people, cannot be found within the borders of the Republic.

III. And this Perpetual Emigration Fund Company, the noblest institution of its kind in existence in any land, is to be abolished, dissolved, wound up, under the direction of the Attorney-General of the United States! For what? The distinguished author of this bill says because it encourages "immigration for the mere object of getting polygamous subjects for the lust of these (Mormon) vagabonds." Shame on him! The man who will deliberately make such a statement ought to be regarded as a vagabond by all decent men. I do not mean "to speak evil of dignities," but I know by common repute, and in not a few instances, by much more direct and positive evidence, of the lives of many "dignitaries" which

suffer by comparison with those of Mormons thus causelessly slandered. There are about 200,000 Mormons in the United States. Of these nearly 150,000 are in Utah. On the score of morals I challenge, on behalf of these much-abused people, comparison with the most virtuous non-Mormon community on the face of the globe. Granted that the Mormons believe in, and advocate, polygamy, who believes that the mere gratification of lust is the motive controlling them? The ignorant, the vulgar, the narrow-minded, gangrened with prejudice and uncharitableness, cannot take a higher view of the conduct of men than the moral standard they fix for themselves. But the statesman who is venturesome enough to deal with social and religious problems ought at least to be able to look above the dead level of common uniformity.

IV. That the Mormons are a profoundly religious people no one who knows them can honestly question. No people ever endured what they have gone through, what they are stoically enduring to-day, for libidinous gratification. It is an insult to common sense to advance such a preposterous theory. If this was the object, why encumber themselves with wives and their offsprings, the responsibility for whose support, protection, care, and education, the Mormon husband and father cannot escape and retain his standing in the church and fellowship with his brethren? It would be far more convenient, economical, and, forsooth! vastly more respectable not to have a peculiar institution.

It is inexplicable to us that the belief in plural marriages should be adhered to with such tenacity. But who will undertake to explain the almost innumerable religious phenomena or attempt to account for their hold upon the human mind? Whether the explanation is satisfactory, or the solution reasonable, depends entirely upon the predisposition of belief on the part of those addressed. The true philosophy of the relation of the State to all matters of religious belief and worship was enunciated by Thomas Jefferson in the original draft of his preamble to a bill establishing religious freedom:

"Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested His Supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it

by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His Almighty power to do, but to extend its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; * * * that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; * * * that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill-tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being, of course, judge of that tendency will make his opinion the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own."

XVIII.

I. Section 17 requires the existing election districts and apportionment of legislative representation to be abolished and empowers the governor, territorial secretary and United States judges to redistrict and apportion representation, and forbids future redistricting and apportioning without the consent of Congress.

The legislative assembly now in session has under consideration, and will pass, a bill creating new election districts and reapportioning representation in the legislative assembly. It is a perfectly fair and altogether unobjectionable bill, but the governor will veto it. He will do this in accordance with a settled policy determined on by the little, but active and malignant, ring of spoilsmen in Salt Lake City, whose collared slave he is. Vain, incompetent, unscrupulous, he does the bidding of his masters with the fidelity of a

dog. He is malignant, because those he serves would cast him off and compel him to pay his debts of honor if he was otherwise. He is mendacious, because his principals assume that there is no lie too preposterous, or too monstrous, not to be swallowed by the public, if it affects the Mormon population of Utah.

Congress has already enacted highly penal laws against a practice which is commanded, as the Mormons believe, by God, and the enforcement thereof is rigorous and remorseless. The juries are so constituted that conviction of the accused, under the rulings of the courts, is a foregone conclusion. Accompanying this legal crusade is a political agitation with the avowed object of disfranchising nineteen-twentieths of the people. Those who are clamoring for this proscriptive action by the federal government are not men of irreproachable characters. Their object is public plunder. The governor of the territory, instead of maintaining a strict neutrality between the great mass of the people and the factious minority, as the representative of the general government ought to do, is the mere puppet of the aggressive minority.

II. Whenever a government becomes the instrument of designing men and is employed for their revengeful purposes, or to promote their schemes of self aggrandizement, it ought not to be tolerated by freemen. The representatives of the federal government in Utah are abusing the power they exercise to these reprehensible objects. Justice, humanity, common sense, and the cause of good government demands at this particular juncture a policy very different from the one pursued by the governor of the territory. While the law is being vigorously and rigorously enforced against polygamists, every effort should be made to convince the great majority of the Mormons, who are monogamists, that the majesty of the government can be vindicated without even a suspicion of bitterness. Instead of obstructing legislation causelessly, the governor should cultivate cordial relations with the legislators and endeavor to promote the enactment of laws which would be fair to all and inimical to none.

There is no desire, as there can be no object to serve, on the part of the Mormons in redistricting and reapportioning representation. They are overwhelmingly in the majority. Why then take from the legislative assembly of the people the constitutional right to legislate for them in this particular? It would be unwise as well

as unrepblican to vest executive and judicial officers with such power.

XIX.

I. Section 18 is unnecessary legislation. The provisions of section 9 of the act of Congress approved March 22, 1882, remain in force until the legislative assembly, with the approval of the governor, enact an election law which will carry into effect the political provisions of that act. The legislative assembly will pass such a law, but it will not be approved by the governor. Two years ago an election law was passed by the legislative assembly, and vetoed by the governor. That law, with amendments, meeting fully every suggestion of the governor, and eliminating every objectionable provision pointed out in his veto-message will be re-enacted. It will be again vetoed, and for the reason that the anti-Mormon agitation party would be robbed of one of its pillars of strength, if the Utah commission was abolished.

You have doubtless heard a great deal of these self-termed commissioners. You appropriate annually to pay their salaries, and defray their travelling and other personal expenses.

They receive \$5,000 apiece in annual salaries, and their travelling and other expenditures amount to about \$12,000 a year more.

They manage by hook or by crook to put annually in the pockets of their sons, or their own, or their wives' relatives for "clerk hire" about \$6,000.

They have the best offices under the government. They visit Salt Lake City twice a year. All their expenses are paid. They come to Washington when they feel like doing so and their expenses are charged up to the government. One trip to the national capital in spring of 1885 cost the United States \$609.30.

They are self-styled commissioners. The act of March 22, 1882, creates "*a board* of five persons, to be appointed by the President, by and with the advice and consent of the Senate," whose sole duties are to appoint registration and election officers for the territory of Utah, and to canvass the returns "of all votes at elections in said Territory for members of the legislative assembly," and to "issue certificates of election for those members, who being eligible for such election, shall appear to have been lawfully

elected." This is "the gross and scope" of their power and authority.

Under all the circumstances, considering their daily contact with the men I have described and the public opinion which has been created in the East against the Mormons, it is, perhaps, not surprising that the gentlemen appointed in the spring of 1882 to perform the simple duties imposed on them by the Edmunds law should have assumed and exercised extraordinary, arbitrary, and grossly illegal powers. To err is human. The natural disposition of men is to grasp authority. These self-styled commissioners are weak men. They imagined that they had a great mission to perform. They were flattered and wheedled and "the insolence of office" perchance came insensibly upon them. Their self-importance grew to such proportions that by the time they were ready to begin their work it was impossible for them to get down to a common-place view of their duties.

II. Bear with me while I eviscerate their first report to the Secretary of the Interior. It is dated August 31st, 1882. They gravely set forth that they were embarrassed by "the opposition made at the outset by some non-Mormons of respectability and influence against holding the regular election for delegate in Congress, as required by law." Think of it! A board whose duties were plainly prescribed by law to be merely the appointment of registration officers to revise the list of voters and of officers to hold elections in accordance with existing laws, and to canvass the returns made by these election officers, discussing with "non-Mormons of respectability and influence" whether they should or should not allow the people of Utah to elect a delegate to Congress. They concluded that there was not "under the law any discretion whatever for the commission." Five Daniels come to judgment!

They proceed—"we did not see how we could excuse the omission if, being present and prepared to proceed with the work assigned us, we should not even attempt to perform this manifest duty, and so it was decided to proceed."

Verily these Dogberrys have written themselves asses! They "decided to proceed" after they had endeavored to find, but could not, an excuse for the omission. Why did they seek for an excuse? Because, forsooth, "some non-Mormons of respectability and in-

fluence" did not want an election held which they knew would result in the choice of a Mormon for delegate to Congress.

The people of Utah had elected a delegate to Congress by an overwhelming majority, and the governor of the territory, in defiance of law and common decency, had ~~certified~~ that the candidate defeated by nearly twenty thousand votes had been chosen. The House of Representatives had contemptuously spurned this certificate, but on the plea that the people's choice was a polygamist it refused to seat him, although there was no law in existence at the time of his election disqualifying him. The seat being declared vacant it was the duty of the governor to order a special election. But the political desperadoes, who owned the governor, objected and the election was not ordered. The self-styled commissioners of course had no authority to act in the premises, but they nevertheless formally considered the question, and October 30, 1882, gravely ordered as follows: "In the absence of any statutory provision, in regard to a special election to fill a vacancy in the office of delegate to Congress from this territory in pursuance of section 26 of the Revised Statutes of the United States, and no call or proclamation having been made by the governor, and the act of Congress, commonly known as the Edmunds bill, being silent as to the authority of this commission to call a special election in any case, it is ordered that no canvass or return shall be made of any votes cast for candidates to fill such vacancy." *Mirabile dictu!* The "board" declined to act because the law was "silent as to" their authority.

I mean to do these gentlemen full justice. They report that "a later embarrassment came in the form of a demand on the part of certain non-Mormon citizens of high character that the commissioners should assume jurisdiction and decide the local statute authorizing women to vote to be illegal and void." Truly this must have been a most serious embarrassment. "A demand"—not a request or suggestion—made by "non-Mormon citizens of high character," that the so-called commissioners should "assume" the highest judicial power and pronounce a territorial statute unconstitutional was a terrible strain upon their modesty. They, however, practised heroic self-denial. Mark their justification for resisting the "demand" of the "non-Mormon citizens of high character:" "We concluded"—that is to say, having debated and considered, we determined—"that it was not competent for the commission to

repeal or modify that statute in the manner suggested." It was not because they doubted their competency to decide a local statute to be illegal and void! By no means. They had no such mean opinion of their powers. They refrained from declaring it void because they "concluded" that "the principle of female suffrage is, in no respect, in conflict with the purpose of the Edmunds Law."

III. See what they did in the way of legislating. Section 8 of the act approved March 22, 1882, provides that "any person cohabiting with more than one woman" shall not be entitled to vote or to hold office in any territory or other place over which the United States have exclusive jurisdiction. The "board" prescribed a test oath to be administered by all election officers to persons seeking to register, whereby the applicants were required to swear that they "did not live or cohabit with more than one woman *in the marriage relation*." No pent-up Utica their powers confined. They exercised, at their sweet will, legislative as well as judicial powers.

After they had concluded their labors, they summed up in a report dated November 17, 1882, in which they modestly say, of their construction of the law prescribing their duties, that "we endeavored to conform to the well-known canons for the construction of statutes, having a due regard for the evident intention of Congress in this act, construed with other acts of Congress *in pari materia*." The "well-known canons" to which they conformed were unknown to the Supreme Court of the United States, else it would not have decided, March 23, 1885, that "the statutory powers of the board are limited to the appointment of the registration and election officers authorized to act, in the first instance, under the law until provision is made by the territorial legislature for the appointment of their successors, and to the canvass of the returns and the issue of certificates of election to those persons who, being eligible for such election, shall appear to have been lawfully elected." In other words, the Supreme Court held that whatever "the board" did outside its "statutory powers" was without force of law.

But, unfortunately, the illegal assumptions of power by the gentlemen who composed this "board" have not been without effect upon the people of Utah. Not content with assuming legislative and

judicial functions, they constituted themselves a general advisory board to Congress and the Executive. In the beginning they professed to be reluctant to recommend "legislation of a radical character," but by and by, while admitting that the Edmunds' law had accomplished its purpose, they joined in the hue and cry of the governor and his gang for the total disfranchisement of the people of Utah and the establishment of a pro-consular government by legislative commission.

IV. Is it not apparent that these gentlemen were, and are, unfit to hold their places? Even admitting that their assumption of extraordinary powers, and their indiscreet exercise of authority reposed in them by law, was due to ignorance, it cannot be questioned that their whole conduct was unwise in the extreme and calculated to defeat the purpose the general government had in view. The utmost delicacy, discretion, and perfect impartiality on their part were imperatively demanded. They should have endeavored to avoid irritating the people by forbearing the exercise of even questionable authority. They should have held aloof from all factions. They should not have heeded the "demands" of Mormons or non-Mormons.

The attitudinizing of these would-be-great men; their frequent visits to the national capital; their bombastic announcements of their "interviews," and of the approval of their "plans" and their "recommendations," would be supremely ridiculous if the Mormon problem was not one that demands the exercise of the highest statesmanship. Congress cannot afford to deal with a social and religious problem which concerns a quarter of a million people, citizens of the United States, who are intelligent, industrious, upright, God-fearing, and generally law-abiding, as mere political expediency may dictate. These people are conscientious. They are as sincere in their belief as the christian martyrs who fearlessly faced hungry Numidian lions in the blood-stained arena of Roman amphitheatres. In very many respects they resemble the primitive christians. They are fond of drawing parallels between their conditions and surroundings, and those of the earliest followers of the Man of Nazareth. They are profound students of the Old Testament, and believe implicitly in the literal meaning thereof. They believe that Abraham was the friend of God, and regulated his life according to divine precepts. They do not practise patriarchal marriage to

gratify their lusts. Canting hypocrites, shallow-pated ministers, unscrupulous demagogues, and designing politicians harp upon this theme *ad nauseam*. They either know nothing of the character of Mormons and the perfect purity of their society or they wilfully and deliberately concoct and disseminate falsehoods.

XX.

I Sections 19, 20, 21, should be amended and made to apply specifically to any "territory or other place over which the United States have exclusive jurisdiction." Section 21 should be amended by striking out in the third line the words "six months" and inserting *one year*, and in the third and fourth lines the words "one hundred dollars," and inserting "one thousand dollars." And the 19th section should be amended by adding to line seven the following: "And a married man, who in any territory or other place over which the United States have exclusive jurisdiction, resorts to, or who is found in, bawdy houses, houses of ill-fame, or assignation houses, shall be liable to prosecution for adultery, and upon conviction shall be punished by imprisonment in the penitentiary not exceeding three years."

II. Sections 22 and 23 are reprehensible and wholly unnecessary. They impose additional burdens upon the government, and upon the people of Utah, against whom the expenses of the courts are charged up. They give deputy-marshals magisterial powers. Deputy-marshals are not selected from the class of people who ought to be given the power of committing magistrates. It is quite certain that such power would not be given to deputy-marshals elsewhere than in Utah. There is no excuse for conferring the powers upon the marshal and his deputies in Utah, which is given by section 23. There is no one who can truthfully say that the Mormons indulge in "riots, routs, affrays, and insurrections," and the regular police authorities provided by the territorial government are ample to preserve order.

III. It is unwise legislation to empower the supreme and district courts of the territory of Utah to appoint commissioners who shall exercise all the powers of justices of the peace under the laws of that territory. The justices of the peace who are elected by the people are invariably upright and impartial men. I defy any one

to point to a wrongful act knowingly done by a Mormon justice of the peace in the administration of justice.

If a policy of intruding officials upon the people for the purpose of harassing and irritating them is to be pursued by the general government, such legislation can be justified only upon that ground.

XXI.

I. Section 24, which takes away from the people the choice of the superintendent of their public schools, makes that officer the appointee of the Supreme Court of the territory, is wrong. The management of the public school system of Utah has received the highest commendations from the choice of the superintendent of their public schools, and the Commissioner of Education. Sectarianism is unknown in the schools of Utah. There is not a sectarian book used. By a law enacted by the legislative assembly in 1881, uniform text-books are used in all the public schools of the territory, and they cannot be changed in periods of five years. The text-books adopted under this law by the territorial superintendent, the county superintendents, and the faculty of the Deseret University were A. S. Barnes & Co.'s Independent Readers and Watson Spellers; Antwerp & Co.'s Ray's Arithmetics; Appleton & Co.'s Standard Geographies; and Krusi's Drawing; Harper & Bros.' New Language Lessons; Clark & Maynard's Anderson's Popular History of the United States; Ivison, Blakeman, Taylor & Co.'s Spencerian System of Copy-Books, Writing, and Penmanship.

There is a territorial school tax of 3 mills levied for allotment to school districts, in proportion to the average pupil attendance, and in addition a school district tax of two mills. The total school fund for the year 1883 was \$215,691.71. The total value of sites, buildings, and all other school property, in that year, was estimated at \$415,186. Of all the states and territories in the Union, there are but thirteen showing a lower percentage of total population who cannot read, Connecticut having the same as Utah, 3.37 per cent. The money raised for school purposes in Utah is greater in amount than the school funds of three states, and of any of the territories save Dakota.

In most of the counties of Utah the schools are graded, and in

many settlements there are central schools where higher branches are taught. The provisions for normal-school training are liberal, and the opportunity for university education is provided for poor and deserving scholars at the Deseret University. Brigham Young made, during his lifetime, munificent endowments for two schools, one at Provo and one at Logan, and in these alone is theology taught.

II. In all the Mormon settlements, commendable pride is manifested in school buildings and their surroundings. In this respect more taste is displayed, and greater provision made for the comfort of pupils than in many of the old states. The general interest manifested in educational matters is a marked characteristic of the Mormon people. In every settlement there are voluntary associations of young men and young women for mutual improvement. They are separate as to sexes, and once a year each society sends delegates to a general convention. The object is mutual improvement in educational matters, and not social enjoyment.

Religious tenets are not taught in the public schools, but the fundamental truths of morality and virtue are inculcated, and the aim is to make the education practical. The course of scientific instruction at the Deseret University is essentially a practical one, the students being exercised in actual work.

The statistical information, which the twenty-fourth section of this bill requires the new territorial superintendent to collect and classify, the present incumbent has been collecting, classifying, and reporting bi-annually to the legislative assembly, and the same has been published. The county superintendents have not only been reporting the progress of schools, "the whole number of children of school age, the number who attend school in each year in the respective counties, and the average length of time of their attendance, the number of teachers and the compensation paid to the same," but they have carefully collected and compiled the school history of every locality, from the settlement thereof down to the present time. Very valuable information for historical purposes has in this way been secured, and will be found in the reports of the territorial superintendent.

The insinuation is made, by requiring these things to be done by a new superintendent, that they have been neglected in the past.

For instance, the appointee of the judges is given the "power to prohibit the use in any district school of any book of a sectarian character." The inference is deducible, from the conferring of this prohibitory power, that sectarian books are now used. There can be no excuse for a dishonest innuendo of this kind. It is on a level with section 8, in which laws are "disapproved and annulled" that do not exist in Utah.

XXII.

I. This bill is but part of the general scheme of legislation which has been determined on for the Territory of Utah. The end in view, and which is to be reached by gradual approaches, is the total disfranchisement of the Mormon people. The shrewd author of the plan is not satisfied that public sentiment would sustain a sweeping enactment by Congress which would with one fell swoop snatch away every vestige of local community self-government and turn over the liberties and property of 150,000 people to the tender mercies of alien rulers. This is what political buccaneers and public plunderers, who hope and expect to profit thereby, have been persistently urging for several years. But the author of the act of March 22, 1882, and the supplement thereto, now under consideration, has hit upon a more adroit, albeit a less honest, means of accomplishing the same end.

I have pointed out the partial and unusual nature of the various provisions of the bill, and have directed attention to the vague language employed to confer some of the most extraordinary powers. It is most ingenious though most reprehensible legislation. The full "gross and scope" of the law cannot be determined until the courts have defined words, construed sentences, and declared the *intent* which the judges conclude the legislators had in their minds. This is reversing the process by which that wonderful product of the wisdom of many generations of lawyers and law-makers, the civil law, was constructed. A few fundamental rules for the government of archaic communities were the basis of the grand system which was expanded, developed, and elaborated to meet the necessities and requirements of civilized society. It was, moreover, a humanizing and liberalizing process of development. In very much the same way, though with many striking points of differ-

ence, the common law, which every Anglo-Saxon proudly boasts is part of his birthright, has been evolved from ancient usages and customs, often harsh, cruel, and barbarous. But this new method of law-making, which has been devised to evade constitutional prohibitions and guarantees, and deprive individuals and communities of rights that are unalienable, is to enact, under the guise of general legislation, partial laws creating new offences, and changing the rules of evidence, and enlarging the powers of the courts, whereby a particular class are alone affected.

If I was asked to name the most astounding thing that has happened in the legislative history of this country, I would unhesitatingly answer, the passage of this bill by the Senate, with only seven votes recorded against it! If I was called upon to indicate the greatest act of moral cowardice of which legislators have, within my time, been guilty, I would instance the votes recorded in favor of this bill by senators who knew it was bristling with provisions grossly violative of the constitution and yet did not dare to oppose it!

II. The power of Congress to exercise exclusive legislative powers for the people of a territory must, I suppose, be acquiesced in, inasmuch as the Supreme Court of the United States has solemnly declared that "the people of the United States, as sovereign owners of the national territories, have supreme power over them and their inhabitants."* The judges assenting to this strong language concluded, however, to qualify it by adding that the supreme power "is not absolute and unlimited."

The Supreme Court, in a famous case,† held that chapter 2, section 3, Article 4 of the constitution is not the fountain whence Congress derives its power to govern the territories, but that the United States having the right to acquire territory by purchase or otherwise under the treaty-making powers, the right to govern was a necessary accompaniment of the right of acquisition. But whether the power is derivative or expressly granted, it must be admitted that, in exercising it, Congress shall not disregard that right of local-community self-government which lies at the basis of all free representative governments. It is a principle of institutional law, peculiar to the race from which we

* *Murphy v. Ramsey*, 114 U. S., 15.

† *Scott v. Sandford*, 19 Howard, 393.

sprang, and without it no free government ever has been, or ever can be, maintained. From the time Tacitus remarked this feature of the common law of primitive Germany, it has been the well-spring of the free institutions which distinguish the governments of the races springing from the liberty-loving and liberty-maintaining Teutonic tribes. Whenever our English ancestors, from any combination of circumstances, temporarily lost sight of, or were deprived of, the right of local-community self-government, they inevitably became the victims of oppressive power exerted by the tyranny of one or of many.

Our forefathers were wisely tenacious of this principle of community government. All the reasons which they gave in justification of their revolt against British tyranny were bottomed on this fundamental right. It was in a town meeting, the embodiment of the idea of local-community self-government, and a venerable survival of an archaic institution, that determined and systematic resistance to the encroachments of King and Parliament was first organized. Otis, old man eloquent, and John Adams, of glorious memory, thundered in the forum, but plain yeoman Sam. Adams, the man of the town meeting, with his committee of correspondence, solidified New England and prepared the way for united action by the thirteen colonies.

III. You have the power to deprive one hundred and fifty thousand people in the territory of Utah of this sacred right of local-community self-government, but remember precedents like curses come back to plague their inventors. It is not so many years since the representatives of the people of thirteen states of this Union were shut out of both Houses of Congress and kept out until State governments were reconstructed, in order, as Judge Black declared, to "maintain the worst men in the highest offices, throw the reins loose on the neck of rapacity, make leprous fraud adored ;

—Place thieves
And give them title, knee and approbation
With Senators on the bench."

It was ten years before the last of the reconstructed states won back the right of local-community self-government. The struggle was a memorable one. Grievous were the wrongs the ostracised people had to endure ; and doubtless the measures resorted

to in their efforts to regain their rights were not always the most righteous. The enlightened opinion of mankind, however, justified the means whereby the end was gained. For myself, I began to doubt whether some of the men who profited by that political revolution conscientiously believed in the principles they had contended for, when I saw that only eight senators from thirteen Southern states indicated by their voice or votes opposition to this bill.

Fundamental rights cannot be taken from Mormon citizens without endangering the liberties of others. The constitution cannot be violated with impunity even if, temporarily, the unreflecting applaud, because a people hated and despised for no good and sufficient cause are the only sufferers. Eternal vigilance is the price of liberty; and especially is it the price of religious liberty. Experience teaches that the only sure guarantee which any one religious denomination has for equal rights of conscience is the absolute freedom of all. If for one pretext or another the property rights of one sect can be invaded, inevitably a like fate will sooner or later overtake the adherents of some other creed. And what would religious liberty amount to if the State could at its pleasure assume the control and management of the real and personal property of this or that church organization?

IV. Is there is no danger threatening religious organizations except sectarian jealousies and rancor? Is there not some reason to fear assaults upon church property from a rapidly growing class that is at war with all conservative institutions? If the time ever comes when an assault is made upon the rights of property in this country, at what class will it first be aimed? Remember, history repeats itself. A Roman Catholic priest having persuaded Louis XIV to revoke the Edict of Nantes, whereby more than a million protestants were driven from France, doubtless hugged the delusion that for all time his church was secure. For a century, Roman Catholicism lorded it over France, and then reaped the whirlwind. Talleyrand, degenerate son of the church, suggested to the Constituent Assembly the policy of the state hiring the priests and regulating religion as it did any other domestic affair. Irreligion was in the ascendant. Church property was confiscated, one hundred and thirty-four archbishops, bishops, and coadjutors, and forty-six thousand priests, who refused to become functionaries of the State, were

placed outside the pale of the law. Persecution followed. The nonjuring clergy were declared "suspected of revolt against the law and of evil intentions against the country." In due time, adoration of the Goddess of Reason supplanted the worship of Almighty God, and, following, came "the revolt of the peasantry, the insurrections of Nîmes, Franche-comté, La Vendée and Brittany, emigration, transportation, imprisonment, the guillotine, or drowning for two-thirds of the clergy of France.*

Let the precedent be made that the State, for any pretext whatever, can interfere with the property rights of religious corporations, and the whole church structure will be struck down by the iron hand of conscienceless uniformity. To-day it is the Mormon Church, upon the theory that the State being the conservator of public morals can deprive it of the control and management of its property, because it teaches and upholds a doctrine inimical to society. To-morrow it will be the Roman Catholic Church, because its ecclesiastical polity recognizes an executive head extraneous to the State, and compels obedience to its decrees by exerting an influence over superstitious minds which degrades the object thereof, and thus injures society. There will be no lack of pretexts, and the logic of common sense will avail nothing against the swelling tide of popular prejudice or the radicalism of irreligionists.

The arguments which support the assumption, by the State, of such extraordinary power are not new. Mirabeau forged them from the suggestions of Talleyrand for the Constituent Assembly of France, and the advocates of sequestration of Roman Catholic Church property in Germany, and its confiscation in Italy and Mexico, have not improved thereon. "Your aim," said Mirabeau, "was to destroy ecclesiastical orders, because their destruction was essential to the safety of the state. If the clergy preserve their property, the clerical order is not destroyed; you necessarily leave it the right of assembling; you sanction its independence. If they are proprietors they are independent, and if they are independent they will associate this independence with the exercise of their functions."

V. Has the federal government been so successful in the past in securing good men for a few territorial offices that the field of em-

* Taine's French Revolution, Vol. 1, p. 185.

ployment must be extended? However it may have been with other territories, I know that Utah has been unfortunate in having imposed upon her worthless, unscrupulous, dishonest, narrow-minded and roguish officials. If we are to form an estimate of the character of future appointments by those already made by a civil-reform democratic administration, the people of Utah may well exclaim, "Good Lord deliver us!"

The temptations in Utah are great. She is wonderfully rich in mineral resources. Speculation is rampant among the adventurous classes who have been drawn thither by hope of lawful or unlawful gain. Contests over mines worth many millions are frequent. Appointments are sought and aspirants are pushed with a view to personal aggrandizement. The success of one set of adventurers attracts others.

The Mormons are patiently industrious and wonderfully thrifty agriculturists. The system of community co-operation has made possible their marvellous achievement in reclaiming a desert and making waste places blossom with roses. The wisdom of their leading men has been exemplified in the founding and elaboration of a local government, which will receive the unqualified approval of every student of institutional history. In the settlement of no other Western territory has the distinguishing feature of old New England, the principle of the town-meeting, community self-government, been so rigidly adhered to as in Utah. Brigham Young, who was pre-eminently great as a leader of men and a builder of communities, was a native of Vermont. His chief co-laborers were either natives of New England, New York, Pennsylvania, or the western reserve of Ohio. Their civil, like their ecclesiastical policy, was essentially democratic. They built not for to-day, but for all time. The community was the starting point. Mutual assistance, mutual forbearance, unity of sentiment, unity of sympathy, love of God, love of fellow-men, and absolute reliance on Divine Providence were the foundations of the community. Co-operation of communities was the guiding principle of the State.

The result is a model local government. The territory is absolutely without debt. The expenses of administration are reduced to the minimum. Taxation, on a very low valuation, is, for territorial purposes, three mills on the dollar. Property in Salt Lake City, with its forty thousand people and all its public improvements, has a

debt of less than \$200,000, created to build an irrigating canal twenty-six miles long, and the rate of taxation, territorial, school, county and municipal, is only 17 mills on the dollar. A model school system is maintained without sectarianism. The percentage of illiteracy is three-tenths of one per cent. less than that of Massachusetts, and one-tenth of one per cent. greater than that of Vermont.

There is no agricultural community on the face of the globe where you can meet so many travelled and educated men as you will in the different Mormon settlements of Utah. You will cease to wonder at this statement when you are told that every year the Church calls upon a large number of young men to go "without scrip and without purse" as missionaries to all lands. These men are gone an average of three years. They preach the gospel, learn languages, take note of all they see and hear. The Mormon is inquisitive as well as acquisitive. He is cautious, secretive, and prudent, because the world looks at him askant. Shrewd at making a bargain, his word is as good as his bond. There is no trade so eagerly sought after as that of the Mormon merchants. They are scrupulously honest, pay invariably one hundred cents to the dollar, and mind their own business.

VI. Although persecution has been their lot from the day their church was organized at Fayette, Seneca County, New York, fifty-six years ago; although they have been the victims of religious bigotry and mob violence in three states where they reared their tabernacles; although their Prophet and founder and his brother were basely assassinated, and John Taylor, now president of the church, was shot five times while in the custody of the officers of the law; although with scant and utterly inadequate preparation more than fifteen thousand souls were compelled to begin, in the dead of winter, a journey of nearly two thousand miles across trackless plains, and over unexplored mountains, to find a refuge in a desert land where they might worship God unmolested by civilized foes; although from the day a characterless wretch, who disgraced the judicial ermine of the federal government, set afloat baseless calumnies against them, down to this hour, they have had to endure more obloquy and ill-treatment than has befallen any other people of modern times, still the Mormons have never faltered in their purpose of granting and securing to all who came into their midst the same liberty of con-

science and freedom of worship which they have so zealously insisted was theirs by birth or adopted citizenship. Their consistency in this respect is indeed a jewel. Contrast their conduct with that of the adherents of any other creed! Do not say they have never had the opportunity to retaliate. For more than ten years they were absolute masters of Utah, and during that time they actually contributed money to assist other denominations to build houses of worship.

When a relentless prosecution is being successfully conducted against every one suspected of violating the laws of 1862 and 1882, which created new offences; when Mormons cannot sit upon juries which are to pass judgment upon those of their faith who are accused; when to accuse a Mormon is tantamount to his conviction; when the Utah penitentiary is overflowing with the convicted and scores of indictments are hanging over others; when almost every leading man of the church is either under indictment or already convicted, you are asked to enact a supplemental law which compels Mormon wives to testify against their husbands, and allows attachments to issue against Mormons wanted as witnesses without subpoenas being previously issued; which makes Mormon homes liable to invasion by rude deputy-marshals, and permits unreasonable searches and seizures to be made; which places the real and personal property of the Mormon Church under the control and management of the government of the United States; which winds up a Mormon corporation created for most beneficent purposes and forfeits and escheats its property; which confers legislative power upon executive and judicial officers of the United States at the expense of the legislative assembly; which grants the United States marshal and his deputies the power of committing magistrates; which, while general in its terms, is so drawn as to make its pains and penalties applicable to Mormons and to exempt non-Mormons; which in suppression of the truth and suggestion of falsehood, in subversion of constitutional rights and defiance of justice, equity, and common decency, is unparalleled in the legislative history of English-speaking people.

I do not believe, I cannot believe, that you will recommend concurrence in such an infamous and utterly indefensible measure.

A. M. GIBSON,

Attorney for the Mormon people.

APPENDIX.

SENATE BILL No. 10.

A bill to amend an act entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March 22, 1882.

Be it enacted by the Senate and House of Representatives, etc., That in any proceeding and examination before a grand jury, a judge, a justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called and may be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be; but such witness shall not be permitted to testify as to any confidential statement or communication made by either husband or wife to each other during the existence of the marriage relation.

SEC. 2. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpoena, compelling the immediate attendance of such witness, when it shall appear to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpoena issued and served in the usual course in such cases; and in such case the usual witness-fees shall be paid to such witness so attached: *Provided*, That no person shall be held in custody under any attachment issued as provided by this section for a longer time than ten days; and the person attached may at any time secure his or her discharge from custody by executing a recognizance, with sufficient sureties, conditioned for the appearance of such person at the proper time as a witness in the cause or proceeding wherein the attachment may be issued.

SEC. 3. That any prosecution under any statute of the United States for bigamy, polygamy, or unlawful cohabitation may be commenced at any time within five years next after the commission of the offense; but this provision shall not be construed to apply to any offense already barred by any existing statute of limitation.

SEC. 4. That every ceremony of marriage, or in the nature of a marriage ceremony, of any kind, in any of the Territories of the United States, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified in writing by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony, and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded. Such certificate or the record thereof, or a duly certified copy of such record, shall be *prima facie* evidence of the facts required by this act to be stated therein, in any proceeding, civil or criminal, in which the matter shall be drawn in question. Any person who shall violate any of the provisions of this section shall

be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than \$1,000, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court.

SEC. 5. That every certificate, record, and entry of any kind concerning any ceremony of marriage, or in the nature of a marriage ceremony of any kind, made or kept by any officer, clergyman, priest, or person performing civil or ecclesiastical functions, whether lawful or not, in any Territory of the United States, and any record thereof in any office or place, shall be subject to inspection at all reasonable times by any judge, magistrate, or officer of justice appointed under the authority of the United States, and shall, on request, be produced and shown to such judge, magistrate, or officer by any person in whose possession or control the same may be. Every person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than \$1,000, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. And it shall be lawful for any United States commissioner, justice, judge, or court before whom any proceeding shall be pending in which such certificate, record, or entry may be material by proper warrant, to cause such certificate, record, or entry, and the book, document, or paper containing the same, to be taken and brought before him or it for the purposes of such proceeding.

SEC. 6. That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

SEC. 7. That it shall not be lawful for any female to vote at any election hereafter held in the Territory of Utah for any public purpose whatever, and no such vote shall be received or counted or given effect in any manner whatever; and any and every act of the governor and Legislative Assembly of the Territory of Utah providing for or allowing the registration or voting by females is hereby annulled.

SEC. 8. That all laws of the Legislative Assembly of the Territory of Utah which provide for numbering or identifying the votes of the electors at any election in said Territory are hereby disapproved and annulled; but the foregoing provision shall not preclude the lawful registration of voters, or any other provisions for securing fair elections which do not involve the disclosure of the candidates for whom any particular elector shall have voted.

SEC. 9. That the laws enacted by the Legislative Assembly of the Territory of Utah conferring jurisdiction upon probate courts, or the judges thereof, or any of them, in said Territory, other than in respect of the estates of deceased persons and in respect of the guardianship of the persons and property of infants, and in respect of the persons and property of persons not of sound mind, are hereby disapproved and annulled; and no probate court or judge of probate shall exercise any jurisdiction other than in respect of the matters aforesaid; and every such jurisdiction so by force of this act withdrawn from the said probate courts or judges shall be had and exercised by the district courts of said Territory, respectively.

SEC. 10. That the laws enacted by the Legislative Assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of such illegitimate child are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: *Provided*, That this section shall not apply to any illegitimate child born previous to the passage of this act.

SEC. 11. That all laws of the Legislative Assembly of the Territory of Utah which provide that prosecution for adultery can only be commenced on the complaint of the husband or wife are hereby disapproved and annulled; and all prosecutions for adultery may hereafter be instituted in the same way that prosecutions for other crimes are.

SEC. 12. That the acts of the Legislative Assembly of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints, and the ordinance of the so-called General Assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, so far as the same may preclude the appointment by the United States of certain trustees of said corporation as is hereinafter provided. The President of the United States, by and with the advice and consent of the Senate, shall

appoint fourteen trustees of the said corporation, who shall have and exercise all the powers and functions of trustees and assistant trustees provided for in the laws creating, amending, or continuing the said corporation, which trustees so appointed shall hold their respective offices for the term of two years; and the trustees of said corporation shall annually or oftener make a full report to the Secretary of the Interior embracing all the property, business affairs, and operations of the said corporation; and the Legislative Assembly of the Territory of Utah shall not have power to change the laws respecting said corporation without the approval of Congress. Said trustees shall each give bond, payable to the United States, with good and sufficient security, for the faithful discharge of the duties incumbent upon him as trustee, in such sum as may be prescribed by the Secretary of the Interior.

SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section 1890 of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: *Provided*, That no building or the grounds appurtenant thereto shall be forfeited which is held and occupied exclusively for purposes of the worship of God.

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title or interest whatever.

SEC. 15. That all laws of the Legislative Assembly of the Territory of Utah, or of the so-called government of the State of Deseret, creating, organizing, amending, or continuing the corporation or association called the Perpetual Emigrating Fund Company are hereby disapproved and annulled; and it shall not be lawful for the Legislative Assembly of the Territory of Utah to create, organize, or in any manner recognize any corporation or association for the purpose of or operating to accomplish the bringing of persons into the said Territory for any purpose whatsoever.

SEC. 16. That it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to dissolve the said corporation mentioned in the preceding section and pay the debts and to dispose of the property and assets thereof according to law. Said property and assets, in excess of the debts and the amount of any lawful claims established by the court against the same, and that by law shall escheat to the United States, shall be taken, invested, and disposed of by the Secretary of the Interior, under the direction of the President of the United States, for the benefit of common schools in said Territory.

SEC. 17. That the existing election districts and apportionments of representation concerning the members of the Legislative Assembly of the Territory of Utah are hereby abolished; and it shall be the duty of the governor, Territorial secretary, and the United States judges in said Territory forthwith to redistrict said Territory, and apportion representation in the same in such manner as to provide, as near as may be, for an equal representation of the people (excepting Indians not taxed), being citizens of the United States, according to numbers, in said Legislative Assembly, and to the number of members of the council and house of representatives, respectively, as now established by law; and a record of the establishment of such new districts and the apportionment of representation thereto shall be made in the office of the secretary of said Territory, and such establishment and representation shall continue until Congress shall otherwise provide; and no persons other than citizens of the United States otherwise qualified shall be entitled to vote at any election in said Territory.

SEC. 18. That the provisions of section 9 of said act, approved March 22, 1882,

in regard to registration and election officers, and the registration of voters, and the conduct of elections, and the powers and duties of the board therein mentioned, shall continue and remain operative until the provision and laws therein referred to to be made and enacted by the Legislative Assembly of said Territory of Utah shall have been made and enacted by said Assembly and shall have been approved by Congress.

SEC. 19. That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

SEC. 20. If any person related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the civil law, shall marry, or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and on conviction thereof shall be punished by imprisonment in the penitentiary not less than three years nor more than five years.

SEC. 21. That if an unmarried man or woman commit fornication, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding \$100.

SEC. 22. That commissioners appointed by the supreme court and district courts in the Territory of Utah shall possess and may exercise all the powers and jurisdiction that are or may be possessed or exercised by justices of the peace in said Territory under the laws thereof, and the same powers conferred by law on commissioners appointed by circuit courts of the United States.

SEC. 23. That the marshal of said Territory of Utah and his deputies shall possess and may exercise all the powers in executing the laws of the United States possessed and exercised by sheriffs and their deputies as peace officers; and each of them shall cause all offenders against the law, in his view, to enter into recognizance to keep the peace and to appear at the next term of the court having jurisdiction of the case, and to commit to jail in case of failure to give such recognizance. They shall quell and suppress assaults and batteries, riots, routs, affrays, and insurrections, and shall apprehend and commit to jail all felons.

SEC. 24. That the office of Territorial superintendent of district schools created by the laws of Utah is hereby declared vacant; and it shall be the duty of the supreme court of said Territory to appoint a Territorial superintendent of district schools, who shall possess and exercise all the powers and duties imposed by the laws of said Territory upon the Territorial superintendent of district schools and who shall receive the same salary and compensation, which shall be paid out of the treasury of said Territory; and the laws of the Territory of Utah providing for the method of election and appointment of such Territorial superintendent of district schools are hereby suspended until the further action of Congress shall be had in respect thereto. The said superintendent shall have power to prohibit the use in any district school of any book of a sectarian character or otherwise unsuitable. Said superintendent shall collect and classify statistics and other information respecting the district schools in said Territory, showing their progress, the whole number of children of school age, the number who attended school in each year in the respective counties, and average length of time of their attendance, the number of teachers and the compensation paid to the same, the number of teachers who are Mormons, the number who are so-called Gentiles, the number of children of Mormon parents and the number of children of so-called Gentile parents, and their respective average attendance at school. All of which statistics and information shall be annually reported to Congress, through the governor of said Territory and the Department of the Interior.

SEC. 25. (a) A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless she shall have lawfully released her right thereto.

(b) The widow of any alien who at the time of his death shall be entitled by law to hold any real estate, if she be an inhabitant of the Territory at the time of such death, shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen.

(c) If a husband seized of an estate of inheritance in lands exchanged them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

(d) When a person seized of an estate of inheritance in lands shall have executed a mortgage on such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged as against every person except the mortgagee and those claiming under him.

(e) Where a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower as against all other persons.

(f) Where in such case the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power of sale contained in the mortgage or by virtue of the decree of a court of equity, and if any surplus shall remain after payment of the moneys due on such mortgage and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus, for her life, as her dower.

(g) A widow shall not be endowed of lands conveyed to her husband by way of mortgage unless he acquire an absolute estate therein during the married period.

(h) In case of divorce dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

Provisions of Codes of various States in regard to Husband and Wife testifying against each other.

New York, Law 1867, Chap. 887.—Husband or wife in special cases competent and compellable to give evidence the same as other witnesses in behalf of any party to suit, action, or proceeding; but sec. 2 of the code provides: "Nothing herein contained shall render any husband or wife competent or compellable to give evidence for or against the other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, or any action or proceeding instituted in consequence of adultery, or in any action or proceeding for divorce on account of adultery, except to prove the fact of marriage, or in any action or proceeding for or on account of criminal conversation."

Code of Iowa, Sec. 3641.—"The husband or wife shall in no case be a witness for or against the other except in a criminal proceeding for a crime committed by one against the other."

Revised Statute of Maine, Chap. 82, Sec. 82.—"The husband or wife of either party may be a witness when either is called to testify with the consent of the other."

Code of Georgia.—"No husband shall be competent or compellable to give evidence for or against his wife in any criminal proceeding, nor shall any wife in any criminal proceeding be competent or compellable to give evidence for or against her husband; but the wife shall be competent but not compellable to testify against her husband upon his trial for any criminal offence committed or attempted to have been committed upon the person of the wife."

Sec. 4573. "If any man shall whip, beat, or otherwise maltreat his wife he shall be guilty of a misdemeanor, and upon conviction shall be punished under sec. 4310 of this act. In such trial the wife shall be a competent witness."

Alabama.—Cannot testify.

Code of Arkansas.—"The following persons shall not be competent to testify—Sec. 2482—Husband and wife for or against each other, or concerning any communication made by one to the other during marriage when called as a witness while that relation existed or afterwards."

Code of Illinois, Chap. 51, Sec. 5.—Husband or wife may be competent witness against each other where the cause of action grows out of personal wrong or injury done by one to the other. [Page 601, Revised Statutes of Illinois, 1885.] The above refers to civil case.

Virginia.—Not competent.

Ohio.—Nothing in Ohio.

Wisconsin, Chap. 176, Sec. 4072.—In an action for criminal conversation the plaintiff's wife is a competent witness for the defendant as to any matter in controversy, except she shall not be held to disclose any confidential communication made during the marriage without the consent of the husband.

Revised Laws of Vermont.—Wife may be a witness in special case prosecuted in the name or against her husband, whether joined or not with her husband as party. [Sec. 1005.]

Texas, Criminal Code Procedure, Chap. 7, Art. 734-5.—“No husband or wife shall in any case testify as to communications made by one to the other while married, nor shall they after the marriage relation ceases be made witnesses as to any such communication made while the marriage relation existed, except in the case where one or the other is prosecuted for an offence, and the declaration or communication made by the wife to the husband, or the husband to the wife, goes to extenuate the offence for which either is on trial. The husband and wife may in all criminal actions be witnesses for each other, but they shall not in any case testify against each other except in a criminal prosecution for an offence committed by one against the other.”

North Carolina.—“Nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action or proceeding except to prove the fact of marriage in case of bigamy or in any action or proceeding in consequence of adultery, or in any action or proceeding for divorce on account of adultery, except to prove the fact of marriage, or in any action or proceeding for or on account of criminal conversation. [Sec. 588, Code of N. C.]

Massachusetts.—Neither husband nor wife shall be compelled to be a witness on any trial upon an indictment, complaint or other criminal proceeding against the other. [Chap. 169, Sec. 18, Public Statutes of Mass.]

Commissioner's Cases—Polygamy, Cohabitation, &c.

Date.	Name.	Before Comm'r.	Witnesses.	Bail.
April, 1884	Rudgar Clawson.....	1.....	30.....	\$3000; afterwards raised by Judge Zane to \$5,000.
June, "	Dr. J. B. Carrington, non-Mormon bigamist.	1, discharged.		
June, 1883	Jonathan D. Wood.....	1.....	7, held in \$200 each	\$2,500
May, "	Olef F. Due.....	1.....		2,500
Nov., 1884	John Aird.....	1.....		3,000
Dec., "	Ole L. Hansen.....	1.....		1,500
" "	John Olson.....	1.....		1,500
" "	Thos. Simpson.....	1.....		2,500
Jan'y, 1885	Angus M. Cannon.....	1.....		1,500
" "	Royal B. Young.....	1.....		2,000
Feb'y, "	Rudolph Ames (non-Mormon)	seduced his wife's sister; habes corpus by Judge Zane.		1,000
Mch., "	P. P. Pratt.....	1.....	held in \$300 each...	3,000
" "	O. P. Arnold.....	1.....		1,500
April, "	A. M. Musser.....	1.....	5.....	1,000
" "	Claudius V. Spencer.....	1.....		1,500
" "	John Sharp.....	1.....		1,500
" "	Edd. Brain.....	1.....		2,000
" "	James Thompson.....	1, a non-Mormon polygamist.	3.....	His own recognizances.
" "	Emil O. Olson.....	1.....		\$1,000
" "	Wm. A. Rosster.....	1.....		1,000
" "	David E. Davis.....	1.....		1,500
" "	S. H. B. Smith.....	1.....	held in \$200 each...	1,500
" "	W. D. Hendricks.....	1.....		1,500
" "	H. B. Clawson.....	1.....		1,500
" "	A. H. Cannon.....	1.....		1,500
" "	James C. Hamilton.....	1.....	5, held in \$200 each	2,500
" "	Geo. Stewart.....	arrested		1,500
May, "	Wm. D. Newsom.....	1.....	6, 1 woman sent to Penitentiary.	3,000
" "	Chas. Simpson.....			
" "	Samuel Humphreys.....			
" "	Isaac Groo.....	1, plead guilty...	6, \$200 each.....	1,500
" "	Marcus L. Shepherd.....	1.....		1,500
" "	David Levi.....	1.....		1,500
" "	James Taylor.....	1.....		1,500
" "	Moroni Brown.....	1.....		1,500
" "	Charles Seal.....	1.....	4, held in \$200 each	3,000
" "	Alfred Best.....	1.....	held in \$200.....	1,000
June, "	Joseph McMurrin.....	1.....		1,500
" "	Geo. Romney.....	1.....		1,500
" "	Andrew Smith.....	1.....	1.....	1,500
" "	Chas. L. White.....	1.....	6.....	500
" "	F. H. Hansen.....	1.....	2.....	500
" "	John Nicholson.....	1.....		1,500
" "	John Connelly.....	1.....		1,500
" "	John Henry Smith.....	1.....	5, no evidence.....	Discharged.
" "	Robert Morris.....	1.....	6.....	\$1,500
May, "	Francis A. Brown.....	1.....		1,500
" "	Job Pingree.....	1.....		1,500
" "	Jos. M. Phelps.....	1.....		2,000
July, "	Robert Swain.....	1.....	3.....	1,500
" "	Hugh S. Gowans.....	1.....	3.....	1,500
" "	John Bowen.....	1.....	4.....	1,500
" "	Thos. Burningham.....	1.....		1,500
" "	Thos. Porcher.....	1.....	2.....	1,000
" "	T. O. Angell, Jr.....	1.....		1,500
" "	Thos. Walton.....	1.....	4.....	1,000
Aug., "	John W. Snell.....	1.....		1,000
Sept., "	Wm. H. Lee.....	1.....	3.....	1,500
" "	Wallace W. Willey.....	1.....	4, bond \$200 each...	1,500
" "	John W. Witt.....	1.....	3, do.....	1,500
" "	John Duke.....	1.....		1,500
" "	Joseph Moulton.....	1.....	2, insufficient evidence; discharged.	discharged.
" "	William Pickett.....	1, bound over for further examination and discharge.		but no witnesses.
" "	Edward Thomas.....	1.....	many witnesses.....	\$1,500
" "	Wm. F. Rigby.....	1.....		1,000
Oct., "	Joseph Slalom.....	1.....	1.....	1,500

Commissioner's Cases—Polygamy, Cohabitation, &c.—Continued.

Date.	Name.	Before Comm'r.	Witnesses.	Bail.
Nov., 1885	Thos. C. Jones.....	1.....	4.....	\$1,000
" "	John W. Keddington.....	1.....		1,500
" "	Henry Grow.....	1.....	witnesses bound in \$200 each.	1,500
" "	Herbert Foulger.....	1.....	4, b'nd in \$200 each.	3,500
" "	John P. Ball.....	1.....	3.....	1,000
" "	William Cowan.....	1.....	3.....	Discharged.
" "	James Moyle.....	1.....	8.....	\$1,500
" "	Chas. W. Nibley.....	1.....		Discharged.
" "	Lorenzo Snow.....	1.....		\$1,800
" "	David M. Stuart.....	1.....		1,500
" "	George H. Taylor.....	1.....	3.....	1,500
Dec., " "	N. H. Groesbeck.....	1.....	7.....	1,500
Jan., 1886	S. F. Ball.....	1.....		1,000
" "	Wm. M. Bromley.....	1.....	4.....	1,500
" "	Wm. Grant.....	1.....	6.....	1,500
" "	Wm. J. Jenkins.....	1.....		1,000
" "	Hyrum Goff.....	1.....		1,000
" "	J. O. Poulson.....	1.....		1,000
" "	Chas. Livingston.....	1.....		1,500

Polygamy and Unlawful Cohabitation Cases.—Trials.

Date.	Name.	Indictment.	Trial.	Conviction.	Sentence.
Mar., 1884	F. Hintze	1.			
Nov., "	Rudgar Clawson.....	1.	2.	1.	3½ yrs. and 6 mos and \$300.
" "	Joseph H. Evans.....	1.	1.	1.	3½ yrs. and 6 mos. and \$250.
Dec., "	Ammon M. Tenney.....	1.	1.	1.	3½ yrs. and \$500.
" "	P. J. Christofferson.....	1.	1.	1.	" "
" "	C. I. Kemp.....	1.	1.	1.	" "
" "	N. J. Flake.....	1.	1.	1.	6 mos. and \$500.
" "	J. N. Skonsen.....	1.	1.	1.	" "
" "	D. K. Udall.....	1.			
" "	Edmund Ellsworth.....	1.	Continued.		
April, 1885	O. M. Stewart.....	1.	Plead guilty.	1.	90 days.
" "	Chas. I. Robson.....	1.	do.	1.	" "
" "	A. P. Spillsbury.....	1.	1.	1.	6 months.
" "	Hyrum Phelps.....	1.	1.	1.	" "
" "	Geo. T. Wilson.....	1.	1.	1.	" "
" "	Jas. T. Wilson.....	1.	1.	1.	" "
Feb., "	Royal B. Young.....	1.	Continued.		
Mar., "	Thos. Simpson.....	1.	1.	1.	2 years; par'd; not a Mormon, and not marr'd at all.
" "	Ole L. Hanson.....	1.	Discharged, no evidence.		
" "	Laban Morrill.....	1.	Plead guilty.	1.	Sentence suspen'd; old and infirm.
May, "	Wm. Fotheringham.....	1.	1.	1.	3 months and \$300; light sentence by mistake of Court.
Mar., "	Eli B. Kelsey.....	1.	Died before trial.		
" "	P. P. Pratt.....	1.	1.	1.	6 months' and \$300 and costs.
" "	O. P. Arnold.....	1.	Plead guilty and recanted.	1.	\$300.
Nov. 10, "	Joseph Sisom.....	2.	Case pending under bonds.		
Feb., "	Wm. McLachlan.....	1.	1 (plead guilty and recanted.)	1.	\$300 and \$21 costs; too poor to pay, so went to Pen.
" "	John Aird.....	1.	1	1.	Suspended.
May, "	Claudius V. Spencer.....	1.	1 (plead guilty, asked for mercy and recanted.)	1.	
" "	A. M. Musser.....	1.	1 (without pr't.)	1.	6 months and \$300.
" "	A. M. Cannon.....	1.	1.	1.	" "
" "	James C. Watson.....	1.	1 (pl'd guilty.)	1.	" "
" "	J. D. Jones.....	1.	1. do.	1.	\$300 and costs.
June, "	Wm. D. Hendricks.....	1.	1. do.	1.	10 days and \$300 and costs.
" "	Rufus Walker.....	1.	1. do.	1.	3 months; in jail 2 months, awaiting trial.
May, "	David Levi.....	1.	1 (plead guilty and recanted.)	1.	\$300.
" "	Wm. J. Pratt.....	1.	1.	1.	4 months and \$300.
" "	John L. Roberts.....	1.	1.	1.	" "
" "	Stuart.....	1.	1.	1.	" "
" "	Winn.....	1.	1.	1.	Fine of \$300.
" "	Samuel Humphreys.....	1.	1.	1.	6 months and \$300.
" "	Chas. Simpson.....	1.	1.	1.	Fine of \$300.
" "	Boynson.....	1.	1.	1.	Sentence suspen'd.
Nov., "	Alex. Leatham.....	1.	1.	1.	6 m., \$300 and costs
" "	A. L. Blackburn.....	1.	1 (pl'd guilty.)	1.	" "
" "	Andrew Bjorn.....	1.	1.	1.	" "
" "	Nahum Porter.....	1.	1.	1.	3 months and \$150.
" "	Wm. G. Garrison, (apostate),	1.	1.	1.	3 months.
" "	Arthur Peck.....	1.	1.	1.	6 m., \$300 and costs
" "	Isaac B. Nash, (old man),	1.	1.	1.	3 months.
" "	Joseph M. Phelps.....	1.	1.	1.	6 m., \$300 and costs
July, "	Moroni Brown.....	1.	1.	1.	6 mos. and \$300.
" "	F. A. Brown.....	1.	1.	1.	" "
" "	Job Pingree.....	1.	1.	1.	5 " "
" "	Chas. F. Middleton.....	1.	Case pending on bonds.		
" "	Henry Dinwiddle.....	1.	do.	do.	

Polygamy and Unlawful Cohabitation Cases.—Trials—Continued.

Date.	Name.	Indictment.	Trial.	Conviction.	Sentence.
Aug., 1885	Joseph McMurrin.....	1.....	Case pending on bonds.	1.....	
" "	Royal B. Young.....	1.....	do.....	1.....	
" "	John W. Snell.....	1.....	do.....	1.....	
Sept., "	John Sharp.....	1.....	Pl'd guilty, and recanted.	1.....	Fined \$300 and costs
" "	John Lang.....	1.....	1.....	1.....	3 months, \$200 and costs.
" "	John Bowen.....	1.....	Case pending on bonds.	1.....	
" "	Hugh S. Gowans.....	3.....	do.....	1.....	
" "	Wm. H. Lee.....	1.....	do.....	1.....	
" "	H. B. Clawson.....	1.....	1.....	1.....	6 mos. and \$300.
" "	T. O. Angell, Jr.....	1.....	1.....	1.....	Fined \$150 and costs
" "	S. W. Sears.....	1.....	1.....	1.....	recanted
Oct., "	Robert Swain.....	1.....	1.....	1, plead guilty	Fined \$300 and costs
" "	Thos. Porcher.....	1.....	1.....	do.....	6 months, \$300 and costs.
Sept., "	Wm. A. Rossiter.....	1.....	1.....	1.....	6 months, \$300 and costs.
Oct., "	John Daynes.....	1.....	1.....	1.....	Fined \$150 and costs
" "	Edward Brain.....	1.....	1.....	1.....	recanted
" "	John Nicholson.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	Alfred Best.....	1.....	1.....	1.....	" "
" "	Emil Olsen.....	1.....	1.....	1.....	" "
" "	Isaac Groo.....	1.....	1 (plead guilty).	1.....	" "
" "	David E. Davis.....	1.....	1.....	1.....	" "
" "	Charles Seal.....	1.....	1.....	1.....	" "
" "	A. W. Cooley.....	1.....	1.....	1, plead guilty	" "
" "	Charles L. White.....	1.....	1.....	do.....	" "
" "	Aurelius Miner.....	1.....	1.....	1.....	" "
" "	John Connelly.....	1.....	1.....	1, plead guilty	" "
" "	Andrew Smith.....	1.....	1.....	do.....	" "
" "	Wm. D. Newsom.....	1.....	1.....	1.....	3 years and \$500—poly; 6 mos. and \$300—cohab.
" "	F. H. Hansen.....	1.....	1.....	1.....	6 months, \$300 and costs.
" "	George Romney.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	John Penman.....	1.....	Case pending on bonds.	1.....	
Nov., "	John W. Keddington.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	Henry Grow.....	1.....	Case pending under bonds.	1.....	
" "	Herbert Foulger.....	3.....	do.....	do.....	
" "	Thomas C. Jones.....	3.....	do.....	do.....	
" "	John P. Ball.....	1.....	do.....	do.....	
" "	John Y. Smith.....	3.....	do.....	do.....	
" "	James Moyle.....	3.....	do.....	do.....	
Dec., "	Geo. H. Taylor.....	3.....	do.....	do.....	
" "	Henry Gale.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	James E. Twitchell.....	1.....	1.....	1.....	" "
" "	Culbert King.....	3 (2 dismissed)	1.....	1.....	" "
Jan., "	Apostle Lorenzo Snow.....	3.....	3 (16 witnesses.)	3, to be sentenced Jan. 16, 1886.	
" "	David M. Stuart.....	2 (1 dismissed)	1.....	1, plead guilty.	6 months, \$300 and costs.
" "	James Taylor.....	1.....	1.....	1.....	Sentence pending.

RECAPITULATION.

Cases before U. S. Commissioners.

Polygamy.....		9
Witnesses.....	52	
Unlawful cohabitation.....		69
Witnesses.....	100	
Discharged.....	8	
Witnesses.....	7	
	8	159
		78

Before District Judges.

Polygamists tried.....	6
Polygamists convicted.....	5
Unlawful cohabitation tried.....	68
Convictions.....	68
Indictments pending.....	22
Indictments not yet made public.....	some 6

SALT LAKE CITY, Jan. 15th, 1886.

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" "	Royal B. Young.....	1.....	do.....	1.....	
" "	John W. Snell.....	1.....	do.....	1.....	
Sept., "	John Sharp.....	1.....	Pl'd guilty, and recanted.	1.....	Fined \$300 and costs
" "	John Lang.....	1.....	1.....	1.....	3 months, \$200 and costs.
" "	John Bowen.....	1.....	Case pending on bonds.	1.....	
" "	Hugh S. Gowans.....	3.....	do.....	1.....	
" "	Wm. H. Lee.....	1.....	do.....	1.....	
" "	H. B. Clawson.....	1.....	1.....	1.....	6 mos. and \$300.
" "	T. O. Angell, Jr.....	1.....	1.....	1.....	Fined \$150 and costs
" "	S. W. Sears.....	1.....	1.....	1.....	recanted
Oct., "	Robert Swain.....	1.....	1.....	1, plead guilty	Fined \$300 and costs
" "	Thos. Porcher.....	1.....	1.....	1.....	6 months, \$300 and costs.
Sept., "	Wm. A. Rossiter.....	1.....	1.....	1.....	6 months, \$300 and costs.
Oct., "	John Daynes.....	1.....	1.....	1.....	Fined \$150 and costs
" "	Edward Brain.....	1.....	1.....	1.....	recanted
" "	John Nicholson.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	Alfred Best.....	1.....	1.....	1.....	" "
" "	Emil Olsen.....	1.....	1.....	1.....	" "
" "	Isaac Groo.....	1.....	1 (plead guilty).	1.....	" "
" "	David E. Davis.....	1.....	1.....	1.....	" "
" "	Charles Seal.....	1.....	1.....	1.....	" "
" "	A. W. Cooley.....	1.....	1.....	1, plead guilty	" "
" "	Charles L. White.....	1.....	1.....	1.....	do.....
" "	Aurelius Miner.....	1.....	1.....	1.....	" "
" "	John Connelly.....	1.....	1.....	1, plead guilty	" "
" "	Andrew Smith.....	1.....	1.....	1.....	do.....
" "	Wm. D. Newsom.....	1.....	1.....	1.....	" "
" "	F. H. Hansen.....	1.....	1.....	1.....	3 years and \$500—poly; 6 mos. and \$300—cohab.
" "	George Romney.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	John Penman.....	1.....	Case pending on bonds.	1, plead guilty	6 months, \$300 and costs.
Nov., "	John W. Keddington.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	Henry Grow.....	1.....	Case pending under bonds.	1.....	
" "	Herbert Foulger.....	3.....	do.....	1.....	
" "	Thomas C. Jones.....	3.....	do.....	1.....	
" "	John P. Ball.....	1.....	do.....	1.....	
" "	John Y. Smith.....	3.....	do.....	1.....	
" "	James Moyle.....	3.....	do.....	1.....	
Dec., "	Geo. H. Taylor.....	3.....	do.....	1.....	
" "	Henry Gale.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	James E. Twitchell.....	1.....	1.....	1.....	" "
" "	Culbert King.....	3 (2 dismissed)	1.....	1.....	" "
Jan., "	Apostle Lorenzo Snow.....	3.....	3 (16 witnesses).	3, to be 1886.	sentenced Jan. 16,
" "	David M. Stuart.....	2 (1 dismissed)	1.....	1, plead guilty.	6 months, \$300 and costs.
" "	James Taylor.....	1.....	1.....	1.....	Sentence pending.

RECAPITULATION.

Cases before U. S. Commissioners.

Polygamy		9
Witnesses	52	
Unlawful cohabitation.....		69
Witnesses.....	100	
Discharged.....	8	
Witnesses	7	
	8	159
		78

Before District Judges.

Polygamists tried.....	6
Polygamists convicted.....	5
Unlawful cohabitation tried.....	68
Convictions.....	68
Indictments pending.....	22
Indictments not yet made public.....	some 6

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" "	Royal B. Young.....	1.....	do.....	do.	
" "	John W. Snell.....	1.....	do.....	do.	
Sept., "	John Sharp.....	1.....	Pl'd guilty, and	1.....	Fined \$300 and costs
" "	John Lang.....	1.....	recanted.	1.....	3 months, \$200 and costs.
" "	John Bowen.....	1.....	Case pending on	bonds.	
" "	Hugh S. Gowans.....	3.....	do.....	do.	
" "	Wm. H. Lee.....	1.....	do.....	do.	
" "	H. B. Clawson.....	1.....	1.....	1.....	6 mos. and \$300.
" "	T. O. Angell, Jr.....	1.....	1.....	1.....	Fined \$150 and costs
" "	S. W. Sears.....	1.....	1.....	recanted	
Oct., "	Robert Swain.....	1.....	1.....	1, plead	Fined \$300 and costs
" "	Thos. Porcher.....	1.....	1.....	guilty	6 months, \$300 and costs.
Sept., "	Wm. A. Rossiter.....	1.....	1.....	1.....	6 months, \$300 and costs.
Oct., "	John Daynes.....	1.....	1.....	1.....	Fined \$150 and costs
" "	Edward Brain.....	1.....	1.....	recanted	
" "	John Nicholson.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	Alfred Best.....	1.....	1.....	1.....	" "
" "	Emil Olsen.....	1.....	1.....	1.....	" "
" "	Isaac Groo.....	1.....	1 (plead guilty).	1.....	" "
" "	David E. Davis.....	1.....	1.....	1.....	" "
" "	Charles Seal.....	1.....	1.....	1.....	" "
" "	A. W. Cooley.....	1.....	1.....	1, plead	" "
" "	Charles L. White.....	1.....	1.....	guilty	" "
" "	Aurelius Miner.....	1.....	1.....	do.....	" "
" "	John Connelly.....	1.....	1.....	1, plead	" "
" "	Andrew Smith.....	1.....	1.....	guilty	" "
" "	Wm. D. Newsom.....	1.....	1.....	do.....	" "
" "	F. H. Hansen.....	1.....	1.....	1.....	3 years and \$500—poly; 6 mos. and \$300—cohab.
" "	George Romney.....	1.....	1.....	1.....	6 months, \$300 and costs.
" "	John Penman.....	1.....	1.....	1, plead	6 months, \$300 and costs.
Nov., "	John W. Keddington.....	1.....	1.....	guilty	6 months, \$300 and costs.
" "	Henry Grow.....	1.....	Case pending	under bonds.	
" "	Herbert Foulger.....	3.....	do.....	do.	
" "	Thomas C. Jones.....	3.....	do.....	do.	
" "	John P. Ball.....	1.....	do.....	do.	
" "	John Y. Smith.....	3.....	do.....	do.	
" "	James Moyle.....	3.....	do.....	do.	
Dec., "	Geo. H. Taylor.....	3.....	do.....	do.	
" "	Henry Gale.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	James E. Twitchell.....	1.....	1.....	1.....	" "
" "	Culbert King.....	3 (2 dismissed)	1.....	1.....	" "
Jan., "	Apostle Lorenzo Snow.....	3.....	3 (16 witnesses).	3, to be 1886.	sentenced Jan. 16,
" "	David M. Stuart.....	2 (1 dismissed)	1.....	1, plead	6 months, \$300 and costs.
" "	James Taylor.....	1.....	1.....	guilty.	Sentence pending.

RECAPITULATION.

Cases before U. S. Commissioners.

Polygamy		9
Witnesses	52	
Unlawful cohabitation.....		69
Witnesses.....	100	
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	8	159
		78

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Indictments pending.....	22
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" "	John W. Snell.....	1.....	do.	do.	
Sept., "	John Sharp.....	1.....	Pled guilty, and recanted.	1.....	Fined \$300 and costs
" "	John Lang.....	1.....	1.....	1.....	3 months, \$200 and costs.
" "	John Bowen.....	1.....	Case pending on bonds.	do.	
" "	Hugh S. Gowans.....	3.....	do.	do.	
" "	Wm. H. Lee.....	1.....	do.	do.	
" "	H. B. Clawson.....	1.....	1.....	1.....	6 mos. and \$300.
" "	T. O. Angell, Jr.....	1.....	1.....	1.....	Fined \$150 and costs
" "	S. W. Sears.....	1.....	1.....	do.	Fined \$300 and costs
Oct., "	Robert Swain.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	Thos. Porcher.....	1.....	1.....	do.	6 months, \$300 and costs.
Sept., "	Wm. A. Rossiter.....	1.....	1.....	1.....	6 months, \$300 and costs.
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" "	Edward Brain.....	1.....	1.....	do.	6 m., \$300 & costs.
" "	John Nicholson.....	1.....	1.....	do.	" "
" "	Alfred Best.....	1.....	1.....	do.	" "
" "	Emil Olsen.....	1.....	1.....	do.	" "
" "	Isaac Groo.....	1.....	1 (plead guilty).	1.....	" "
" "	David E. Davis.....	1.....	1.....	do.	" "
" "	Charles Seal.....	1.....	1.....	do.	" "
" "	A. W. Cooley.....	1.....	1.....	1, plead guilty	" "
" "	Charles L. White.....	1.....	1.....	do.	" "
" "	Aurelius Miner.....	1.....	1.....	do.	" "
" "	John Connelly.....	1.....	1.....	1, plead guilty	" "
" "	Andrew Smith.....	1.....	1.....	do.	" "
" "	Wm. D. Newsom.....	1.....	1.....	1.....	3 years and \$500—poly; 6 mos. and \$300—cohab.
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" "	Thomas C. Jones.....	3.....	do.	do.	
" "	John P. Ball.....	1.....	do.	do.	
" "	John Y. Smith.....	3.....	do.	do.	
" "	James Moyle.....	3.....	do.	do.	
Dec., "	Geo. H. Taylor.....	3.....	do.	do.	
" "	Henry Gale.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	James E. Twitchell.....	1.....	1.....	1.....	" "
" "	Culbert King.....	3 (2 dismissed)	1.....	1.....	" "
Jan., "	Apostle Lorenzo Snow.....	3.....	3 (16 witnesses).	3, to be 1886.	sentenced Jan. 16,
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		78

Before District Judges.

Polygamists tried	6
Polygamists convicted	5
Unlawful cohabitation tried	68
Convictions	68
Indictments pending	22
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Sept., "	John Sharp.....	1.....	Pl'd guilty, and recanted.	1.....	Fined \$300 and costs
" "	John Lang.....	1.....	1.....	1.....	3 months, \$200 and costs.
" "	John Bowen.....	1.....	Case pending on bonds.	do.	
" "	Hugh S. Gowans.....	3.....	do.	do.	
" "	Wm. H. Lee.....	1.....	do.	do.	
" "	H. B. Clawson.....	1.....	1.....	1.....	6 moa. and \$300.
" "	T. O. Angell, Jr.....	1.....	1.....	1.....	Fined \$150 and costs
" "	S. W. Sears.....	1.....	1.....	do.	Fined \$300 and costs
Oct., "	Robert Swain.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
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" "	A. W. Cooley.....	1.....	1.....	1, plead guilty	" "
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" "	H. B. Clawson.....	1.....	1.....	1.....	6 mos. and \$300.
" "	T. O. Angell, Jr.....	1.....	1.....	1.....	Fined \$150 and costs
" "	S. W. Sears.....	1.....	1.....	do.....	Fined \$300 and costs
Oct., "	Robert Swain.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	Thos. Porcher.....	1.....	1.....	do.....	6 months, \$300 and costs.
Sept., "	Wm. A. Rossiter.....	1.....	1.....	1.....	6 months, \$300 and costs.
Oct., "	John Daynes.....	1.....	1.....	1, recanted.	Fined \$150 and costs
" "	Edward Brain.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	John Nicholson.....	1.....	1.....	1.....	" "
" "	Alfred Best.....	1.....	1.....	1.....	" "
" "	Emil Olsen.....	1.....	1 (plead guilty).	1.....	" "
" "	Isaac Groo.....	1.....	1.....	1.....	" "
" "	David E. Davis.....	1.....	1.....	1.....	" "
" "	Charles Seal.....	1.....	1.....	1.....	" "
" "	A. W. Cooley.....	1.....	1.....	1, plead guilty	" "
" "	Charles L. White.....	1.....	1.....	do.....	" "
" "	Aurelius Miner.....	1.....	1.....	1.....	" "
" "	John Connelly.....	1.....	1.....	1, plead guilty	" "
" "	Andrew Smith.....	1.....	1.....	do.....	" "
" "	Wm. D. Newsom.....	1.....	1.....	1.....	3 years and \$500—poly; 6 mos. and \$300—cohab.
" "	F. H. Hansen.....	1.....	1.....	1.....	6 months, \$300 and costs.
" "	George Romney.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	John Penman.....	1.....	Case pending on bonds.	1.....	
Nov., "	John W. Keddington.....	1.....	1.....	1, plead guilty	6 months, \$300 and costs.
" "	Henry Grow.....	1.....	Case pending under bonds.	1.....	
" "	Herbert Foulger.....	3.....	do.....	do.....	
" "	Thomas C. Jones.....	3.....	do.....	do.....	
" "	John P. Ball.....	1.....	do.....	do.....	
" "	John Y. Smith.....	3.....	do.....	do.....	
" "	James Moyle.....	3.....	do.....	do.....	
Dec., "	Geo. H. Taylor.....	3.....	do.....	do.....	
" "	Henry Gale.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	James E. Twitchell.....	1.....	1.....	1.....	" "
" "	Culbert King.....	3 (2 dismissed)	1.....	1.....	" "
Jan., "	Apostle Lorenzo Snow.....	3.....	3 (16 witnesses.)	3, to be 1886.	sentenced Jan. 16,
" "	David M. Stuart.....	2 (1 dismissed)	1.....	1, plead guilty.	6 months, \$300 and costs.
" "	James Taylor.....	1.....	1.....	1.....	Sentence pending.

RECAPITULATION.

Cases before U. S. Commissioners.

Polygamy		9
Witnesses	52	
Unlawful cohabitation.....		69
Witnesses.....	100	
Discharged.....	8	
Witnesses	7	
	8	78

Before District Judges.

Polygamists tried.....	6
Polygamists convicted.....	5
Unlawful cohabitation tried.....	68
Convictions.....	68
Indictments pending.....	22
Indictments not yet made public.....	some 6

SALT LAKE CITY, Jan. 15th, 1886.

Note.—Since January 15 forty-five indictments for unlawful cohabitation have been found, and the trials are now proceeding in the 3d District Court in Salt Lake City, the convictions averaging two a day.

FEB. 18, 1886.

Polygamy and Unlawful Cohabitation Cases.—Trials—Continued.

Date.	Name.	Indictment.	Trial.	Conviction.	Sentence.
Aug., 1885	Joseph McMurrin.....	1.....	Case pending on	bonds.	
" "	Royal B. Young.....	1.....	do.....	do.	
" "	John W. Snell.....	1.....	do.....	do.	
Sept., "	John Sharp.....	1.....	Pl'd guilty, and	1.....	Fined \$300 and costs
" "	John Lang.....	1.....	recanted.	1.....	3 months, \$300 and costs.
" "	John Bowen.....	1.....	Case pending on	bonds.	
" "	Hugh S. Gowans.....	3.....	do.....	do.	
" "	Wm. H. Lee.....	1.....	do.....	do.	
" "	H. B. Clawson.....	1.....	1.....	1.....	6 mos. and \$300.
" "	T. O. Angell, Jr.....	1.....	1.....	1.....	Fined \$150 and costs
" "	S. W. Sears.....	1.....	1.....	recanted	
Oct., "	Robert Swain.....	1.....	1.....	1, plead	Fined \$300 and costs
" "	Thos. Porcher.....	1.....	1.....	guilty	6 months, \$300 and costs.
" "	Thos. Porcher.....	1.....	1.....	do.....	6 months, \$300 and costs.
Sept., "	Wm. A. Rossiter.....	1.....	1.....	1.....	6 months, \$300 and costs.
Oct., "	John Daynes.....	1.....	1.....	1.....	Fined \$150 and costs
" "	Edward Brain.....	1.....	1.....	recanted	
" "	John Nicholson.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	Alfred Best.....	1.....	1.....	1.....	" "
" "	Emil Olsen.....	1.....	1.....	1.....	" "
" "	Isaac Groo.....	1.....	1 (plead guilty).	1.....	" "
" "	David E. Davis.....	1.....	1.....	1.....	" "
" "	Charles Seal.....	1.....	1.....	1.....	" "
" "	A. W. Cooley.....	1.....	1.....	1, plead	" "
" "	Charles L. White.....	1.....	1.....	guilty	" "
" "	Aurelius Miner.....	1.....	1.....	do.....	" "
" "	John Connelly.....	1.....	1.....	1, plead	" "
" "	Andrew Smith.....	1.....	1.....	guilty	" "
" "	Wm. D. Newsom.....	1.....	1.....	do.....	" "
" "	F. H. Hansen.....	1.....	1.....	1.....	3 years and \$500—poly; 6 mos. and \$300—cohab.
" "	George Romney.....	1.....	1.....	1.....	6 months, \$300 and costs.
" "	John Penman.....	1.....	1, plead	guilty	6 months, \$300 and costs.
Nov., "	John W. Keddington.....	1.....	Case pending on	bonds.	
" "	Henry Grow.....	1.....	1, plead	guilty	6 months, \$300 and costs.
" "	Herbert Foulger.....	3.....	Case pending under	bonds.	
" "	Thomas C. Jones.....	3.....	do.....	do.	
" "	John P. Ball.....	1.....	do.....	do.	
" "	John Y. Smith.....	3.....	do.....	do.	
" "	James Moyle.....	3.....	do.....	do.	
Dec., "	Geo. H. Taylor.....	3.....	do.....	do.	
" "	Henry Gale.....	1.....	1.....	1.....	6 m., \$300 & costs.
" "	James E. Twitchell.....	1.....	1.....	1.....	" "
" "	Culbert King.....	3 (2 dismissed)	1.....	1.....	" "
Jan., "	Apostle Lorenzo Snow.....	3.....	3 (16 witnesses.)	3, to be	sentenced Jan. 16, 1886.
" "	David M. Stuart.....	2 (1 dismissed)	1.....	1, plead	6 months, \$300 and costs.
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